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THE LEGAL USE OF TERROR AS A WEAPON

**A thesis presented to the Faculty of the U.S. Army
Command and General Staff College in partial
fulfillment of the requirements for the
degree**

MASTER OF MILITARY ART AND SCIENCE

by

DAVID R. HOGG, CAPT., USA

B.S., United States Military Academy, West Point, N. Y., 1981

**Fort Leavenworth, Kansas
1992**

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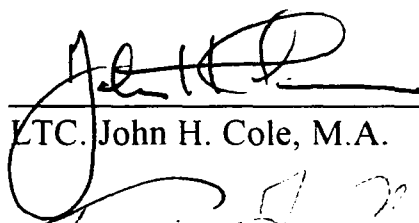
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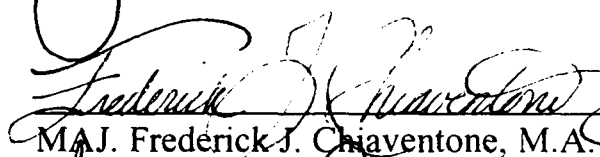
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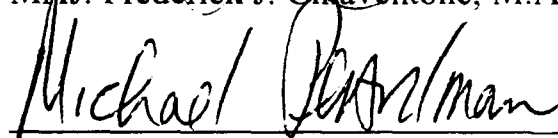
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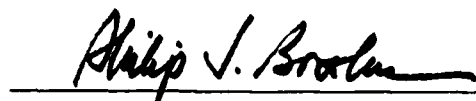
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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U.S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)

ABSTRACT

THE LEGAL USE OF TERROR AS A WEAPON by CPT(P) David R. Hogg, USA, 116 pages.

This study investigates the legal use of terror as a weapon to accomplish national goals and objectives. This study does not advocate using terrorism. Terrorism, for the purpose of this paper, is illegal. Legal terror, by my criteria, conforms to the standards of the laws of land warfare.

Specific Criteria are established to define what constitutes using legal terror as a weapon. These criteria are used to analyze specific case studies to determine if the United States has used legal terror in the past.

There are two major factors in defining legal terror. First, the target must be legally viable as defined by the laws of land warfare. Secondly, the method of engaging that target must also conform to the laws of war.

The conclusion of this study is that legal terror is a legitimate weapon. It has been used in the past and will probably be used in the future.

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CHAPTER ONE

INTRODUCTION: LEGAL TERROR

TERRORISM (ter'e-riz'em) The act of terrorizing. Unlawful acts of violence committed by an organized attempt to overthrow a government.

TERRORIZE (ter'e-riz) To coerce through intimidation.

TERROR (ter' er) An overwhelming impulse of fear; extreme fright or dread.

Webster Comprehensive Dictionary Encyclopedia Edition 1988

When most people think of terrorism, they think of the December 1988 downing of Pan Am flight 103 that blew up over Lockerbie, Scotland, killing 259 people, or the 1972 killing of 9 Israeli athletes by members of the terrorist group Black September during the 1972 Olympics in Munich, West Germany. Terrorist acts include bombing, hijacking, kidnapping and assorted crimes against humanity. Rarely, unless one is a terrorist, does the term "terrorism" identify with the "good guys."

Terrorism has been and will continue to be a real threat in today's world.¹ Because of this threat, there are literally hundreds of books, articles and associated material on terrorism and counterterrorism. Most of these sources attempt to define acts of terrorism to recommend ways to combat it. Some terrorist "experts" have described terrorism as a criminal act that should be dealt with by law enforcement agencies.² Other terrorist "experts" have defined terrorism as a form of warfare that should be countered using military means.³ The United States currently has four different definitions for terrorism. The problem of defining terrorism is both a national and international issue. Consequently, I will discuss the four U.S. definitions to establish a better understanding of the complexity involved with defining terrorism.

For the purpose of my thesis, terrorism is the illegal use of force, or the threat of force, in an attempt to coerce or terrorize an individual or collective group of people for political, military or criminal gains. The key point in my definition is that terrorism is an illegal use of force against non-combatants.

I do not promote terrorism as a form of warfare. Instead, the purpose behind this study is to identify cost effective, legally acceptable means in which to wage war, short of an all out conflict. This study will examine the

legal use of terror as a weapon. I will look at how to legally use terror to target a specific individual, site or group of individuals with the intent of neutralizing their effectiveness. These targets, in accordance with the laws of land warfare, cannot be non-combatants. The targeting of these individuals or sites will be in an attempt to gain a political or military objective without subjecting the country as a whole to the dangers of conventional or nuclear conflict.

The Nature Of The Problem

The world is changing faster today than we could ever imagine or hope for. With these changes, new uncertainties arise. The end of the Cold War has resulted in the break up of the Soviet Union. The "threat" is no longer perceived as two super powers battling it out on the German plains. This has forced us to reevaluate the role and size of our military forces. The United States' military is looking at its new role in this changing world. Despite the changes in world power, the spreading of weapons of mass destruction has increased the dangers of armed conflict. We need to examine how we will accomplish our national goals and objectives, short of war. If we can prevent a war by selectively targeting and neutralizing our enemies, we may be able to avoid the dangers of an all out war, conventional or nuclear.

One way to accomplish this may be with the judicious use of terror. My thesis will examine legal terror as a possible alternative to how the United States Government conducts future operations in a changing new world.

Direction Of Research Effort

The focus of this paper is to look at legal terror, and examine its use as a military weapon to achieve national goals and objectives. To accomplish this study, I will define the act of terror and the specific legal criteria for its use. The establishment of the legal criteria is critical. Without conforming to laws, the use of terror as a weapon would be terrorism by accepted definition. I will apply the criteria to specific case studies to decide if there is a precedent in the use of legal terror as a weapon by the United States. From this historical analysis, I will then offer justifications why terror should or should not be used as a means to achieve our national objectives.

Thesis Research Question

The primary research question of this thesis is whether or not legal terror should be used as a weapon by the United States Government? This

primary question lends itself to the following subsequent questions that will be addressed in this thesis.

1. **What is terrorism?** To understand the legal use of terror, you must first understand terrorism. Therefore, the difficulty of defining terrorism will be discussed in detail.

2. **What is the legal use of terror as a weapon?** The legal standard that will be used to answer this question is the United States' Laws of Land Warfare.

3. **What is a lawful target?** The target of legal terror, must be a legitimate target according to our laws of war. The United States has a moral and a political role to play in the international arena. Because of this, we must be able to justify, morally and legally, our military actions to both the international community and the people of the United States.

4. **Has the United States Government used terror as a weapon of warfare in the past?** If the United States has used terror in the past, then it has set a precedent for its use. This precedent will be the rationale for why we can and possibly should use terror to help us in accomplishing our strategic goals.

5. **What are the implications for the United States Government should it use terror as a weapon?** How would this affect the role and

missions of the United States military? These questions are meant to stimulate further study on the topic of legal terror and the laws that support it.

Problems Associated With The Research

There are three major problems to overcome in this thesis: the negative connotations associated with the terms terrorism and terror; defining the term legal terror; and specifying the criteria that will make up the legal act of terror.

Assumptions

This thesis uses the following assumptions:

1. The United States will continue to use elements of national power to achieve her national goals and objectives.
2. The United States will continue to decrease the size of her armed forces. Because of this, we will continue to look at cost effective ways in which to achieve our national goals and objectives.
3. Political considerations will be imperative in using terror as a weapon along with other elements of national power.

4. Weapons of mass destruction will continue to spread, increasing the dangers of participating in an armed conflict.

Definition Of Key Terms

What is Terrorism?

There is not one agreed upon definition for terrorism in the world.⁴ Depending on the country's perspective, terrorism could range anywhere from a criminal act to an act of warfare. The democratic nations tend to look at terrorism as a criminal act whereas many third world nations look at terrorism as a prelude to revolutionary warfare.⁵

In the United States alone, there exist four different definitions of terrorism. The Federal Bureau of Investigation (FBI) defines terrorism as "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in furtherance of political or social objectives."⁶ The FBI's primary concern with terrorism is on the issue of it being a criminal act that should be dealt with by law enforcement agencies.⁷ The FBI further recognizes two specific kinds of terrorism, international and domestic. The FBI is responsible for investigating these two forms of terrorism only when they target United States citizens.

In 1988, then Vice President Bush held a conference on combating terrorism. This conference or Task Force, defined terrorism as "the unlawful use or threat of violence against persons or property to further political or social objectives. It is generally intended to intimidate or coerce a government, individuals or groups to modify their behavior or policies."⁸ This definition differs from the FBI's in that it recognizes that terrorism is also the threat of violence. This is a significant factor in the effects that terrorism has on a society.

The Department of State developed its own definition on terrorism as well. The Department of State defines terrorism as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine state agents, usually intended to influence an audience."⁹ The Department of State's definition is quite different from the previous definitions. It identifies the terrorist as a political group or "state agent." This definition disregards criminal terrorism and fails to address the aspect of the threat of violence.

The last definition of terrorism is from the Department of Defense (DOD). The DOD definition states that terrorism is the "unlawful use or threatened use of force or violence against individuals or property, with the intention of coercing or intimidating governments or societies, often for po-

litical or ideological purposes."¹⁰ The DOD's definition agrees with the FBI and the "1988 Task Force" in that terrorism is an "unlawful" use of force or threat of force.

Of the four definitions, the only consistent description of terrorism is that it is the "unlawful use of force" (three out of four) and that the purpose of the act is to coerce, influence or intimidate a certain target group. The challenge now becomes what determines the lawful or unlawful use of force and by what standard is that determination made?

What is the lawful use of force?

For this thesis the lawful use of force will be explained using the laws of war according to Field Manual 27-10. I will not include the Protocols to the Geneva Conventions, because the United States is only a signatory of that agreement. As a signatory, the United States agrees in principal, but it must be approved by Congress before it becomes legally recognized by our country. The details of the lawful use of force will be covered in chapter four.

What is legal terror?

For my thesis, to decide whether the United States Government should use legal terror as a weapon, the legal use of terror will consist of three elements. These elements are:

1. **A specific objective or goal:** Coercion of a specific individual or group of individuals (such as a government or political infrastructure) to achieve our national or strategic objective.

2. **A target:** The target must be a lawful target as described by the laws of war. This excludes all non-combatants, however, the target can be an object, individual, or group of individuals, as long as it meets the legal criteria of a military target.

3. **A method of engagement:** Use or the threat of use, either directly or indirectly by military assets. These assets can be an individual soldier or military unit, a specific weapon or weapon system, or a combination of the above. The target will be engaged directly or indirectly depending on the situation. In addition, the laws of war will define the limitations, if any, on how to engage a target. For example, torture is a method of engagement, but not a legal one, so it would not pass the criteria test.

Limitations

The limitations in this study are primarily a matter of defining terms. Consequently, I have defined a legal act of terror. The other limitation on this study is the political ramification in using terror as a weapon. The use of terror may be legally acceptable, but politically unacceptable. Consequently I will not address the issue of what is politically right or wrong. I will, however, mention the political factors involved with using legal terror as a weapon at the conclusion of this study.

Delimitations

The major delimitations of this study are as follows:

1. This study will only deal with the United States. I will not analyze other nations' use of terror or terrorism as a weapon.
2. The legality of what constitutes the lawful use of force and what are legitimate targets will be determined using FM 27-10, *The Laws Of Land Warfare*.
3. The historical case studies I will use are:
 - a. The Second Seminole War, 1835 - 1842.
 - b. The Philippine Insurrection, 1897 - 1902.
 - c. The Phoenix Program in Vietnam, 1968 - 1972.

d. The United States Bombing Raid on Libya, April 1986.

Significance Of The Study

My study differs from most studies on terrorism because I am looking at how to use the specific act of legal terror to further United States' goals and objectives. If legal terror is used as a military tool then the question becomes how will that change or effect the way the U.S. conducts future operations, if at all?

Conclusion

As the world changes so must the United States. The possibility for low intensity conflicts throughout the world is increasing while at the same time the United States is decreasing the size of her armed forces. How will the United States conduct future operations and how will it insure that it can achieve its national goals and objectives? Legal terror, as a weapon, is a possibility. Depending on how it is used, terror is a low cost venture. It can have sweeping ramifications on the outcome of a conflict. This study will attempt to show that there exist historical precedents in the United States for using legal terror to achieve national goals and objectives. Whether it is truly viable or not will be the conclusion of this study.

This thesis consists of a total of six chapters:

Chapter one is the introduction to the thesis topic, a list of key definitions of terms and the rationale for conducting this study.

Chapter two is a literature review, which provides additional background into the study of terrorism and terror. This chapter also discusses and identifies key resources so that the reader will have a better understanding of the scope of this study.

Chapter three is a discussion of the research methodology. The methodology of this thesis consists of: defining specific criteria for the legal use of terror, and applying the criteria to four different case studies to show that the United States has used legal terror in the past as a weapon.

Chapter four is a discussion of the laws of war as they apply to the legal use of force and what constitutes a legitimate target. This chapter will set the ground work on establishing what is a legally acceptable means of waging war. It also will discuss in detail what targets can legally be attacked.

Chapter five will be the application of my criteria to historical case studies. This chapter will cover the Second Seminole War, the Philippine Insurrection, the Vietnam Phoenix Program and finally the United States' 1986 bombing raid on Libya. Each case study will provide background in-

formation as to the problems and the military solutions to solve the problems. Then, the criteria for the legal use of terror will be applied to each study. An analysis will follow to determine the results of using terror as a weapon. The legal standard used is today's standard. In two of the earlier case studies, the Second Seminole War and the Philippine Insurrection, the legal standards were different. My reason for applying today's legal standards is to establish a base line for analysis and to show that despite the historical differences, legal terror was or was not used.

Chapter six consists of the final analysis and conclusions to this study. This chapter will discuss the ramifications of my findings, what my findings could imply for future conflicts and areas that need to be examined further.

Notes

¹Bruce Hoffman, "An Agenda for Research On Terrorism And LIC in the 1990s," RAND, 1991, 6.

²Oliver B. Revell, "International Terrorism," Speech before the Sixth annual International Policing Executive Seminar, 12 April 1989.

³Donald J. Hanle, *Terrorism: The Newest Face Of Warfare*, (McLean, Virginia: Pergamom-Brassey's International Defense Publishers, 1989), 1

⁴Neil C. Livingstone, *The Cult of Counterterrorism: The "Weird World" of Spooks, Counterterrorists, Adventurers, and the Not Quite Professionals* (Lexington Books, 1990), 20 and Lt. Col. Richard J. Erickson, *Legitimate Use of Military Force Against State Sponsored International Terrorism* (Maxwell Air Force Base, Alabama: Air University Press, 1989), 24.

⁵*Legitimate Use of Military Force Against State Sponsored International Terrorism*, 26.

⁶Oliver B. Revell, "Aviation Security," speech before the American Society for Industrial Security Seventh Annual Government/Industry conference on Terrorism (U.S. Department of Justice: Federal Bureau of Investigation, April 12 1989), 1.

⁷Oliver B. Revell, "International Terrorism," Speech before the Sixth annual International Policing Executive Seminar, 12 April 1989.

⁸*Legitimate Use of Military Force Against State Sponsored International Terrorism*, 27.

⁹*Ibid.*, 27.

¹⁰*Ibid.*, 27.

CHAPTER TWO

LITERATURE REVIEW

Introduction

There are a variety of publications available in the Combined Arms Research Library (CARL) on the subject of terrorism. I have divided the publications into three major sub-groupings: government sources, non-fiction books and magazines, and studies written by other students and professionals.

The Department of Defense manuals define terms such as terrorism, legal use of force and legitimate targets. *Joint Publication (Joint Pub) 1-02* is the official dictionary for the Department of Defense on all military and associated terms. *Joint Pub 1-02* also incorporates the NATO and IADB (Inter-American Defense Board) dictionaries that are of standard use in both Joint and Combined operations.

Besides *Joint Pub 1-02*, the following is a list of other government sources used: *FM 100-20, Military Operations in Low Intensity Conflict*, *FM*

100-25, Doctrine for Army Special Operations Forces; Department of the Army Pamphlet 27-50-204, The Army Lawyer; and FM 27-10, The Law of Land Warfare. DA Pam 27-50-204 and FM 27-10 are the main references used in analyzing the legal aspects of using military force and establishing legitimate targets.

There are several non-fiction books that deal both directly and indirectly with the subject of terrorism. These sources provide detailed background information important in understanding of the nature of terrorism.

The remainder of this literature review will provide information on key topic areas.

Background Information On Terrorism

Terrorism continues to be a violent aspect of today's society. The reasons for terrorism and the different types of terrorism vary. Terrorists thrive on publicity. With the increase in the capabilities of media networks to provide constant, live and playback coverage of a terrorist events, the terrorist can make a very cost effective statement for the world to see.

One of the more informative works on terrorism and counterterrorism is *The Cult of Counterterrorism* by Neil C. Livingstone. Livingstone deals mainly with the aspects of counterterrorism. He also provides excellent in-

formation on other authors who have proclaimed themselves one way or another to be "experts." Livingstone has identified many of the so called experts as being no more than adventurers or, occasionally writers of good fiction. The importance of this book is that it provides information on legitimate and respected sources in the field of terrorism.

A theory on terrorism, that has become popular recently, is the hypothesis of terrorism as a form of warfare. In his book, *Terrorism the Newest Face of Warfare*, Donald J. Hanle provides an excellent example of a comparative analysis of warfare and terrorism. Hanle presents the idea that military, revolutionary and state-sponsored terrorism are forms of warfare. The purpose of his book was to prove that certain types of terrorism are modern forms of warfare. Because they are forms of warfare, he suggests that they should be countered using military force.

There are several theses/studies written on the subject of terrorism. These studies provide additional insight into the subject. They ask one to consider other aspects of this subject that might not normally be considered. These sources also provide additional bibliographical data that can be used to conduct research. One such study is a student report by J.G. Humphries. His report is called "International Terrorism as a Lawful Form of Warfare. An Idea Whose Time Should Not Arrive." Humphries establishes a com-

mon criteria for what makes up warfare and then applies those criteria to the different forms of terrorism. In his study of what he calls the seven major forms of terrorism, only three, according to the author, meet the criteria for being a form of warfare. The author's study focused on the idea that because these forms of terrorism meet the criteria he had established, the terrorist should be countered in what he describes as the "classical principles of war and combat." Like Hanle, Humphries also supports using military means for countering terrorism because he feels that terrorism is a form of warfare. The main difference between what these two authors present and I, is that I am looking at how to justify the use of legal terror and not just counterterrorism.

What Is The Legal Use Of Force?

In studying the legal aspects of war, *FM 27-10, The Law of Land Warfare* and *DA Pam 27-50-204, The Army Lawyer* are the two primary sources used. *The Law of Land Warfare* is the "bible" for the legal use of military force. It discusses what kind of military force is legitimate and when it can be used. It also provides the detailed guidance necessary in deciding what constitutes a legitimate target and what does not. The understanding of what comprises the lawful use of force and the identification of legitimate targets

are vital factors in the differentiation between legitimate military operations and terrorism.

Besides *The Law of Land Warfare*, *The Army Lawyer*, DA Pam 27-50-204, provides excellent information on defining legitimate military targets. Taken from this manual, are diagrams that show the different types of legal targets and their relationship to the military and political sides of a conflict. These diagrams show targets, both conventional targets and unconventional, that can be legally engaged by military force. These targets can be individual military or political leaders, providing that they are targeted for military and not political reasons.¹ Chapter four of this paper will go into more detail on this subject.

Historical Case Studies

The purpose behind the case studies is to examine the United States' actions during specific conflicts in history. From this study, I hope to show the United States has used legal terror as a policy, be it local or national, to achieve its final objectives.

War in the Shadows, Vol. 1 & 2, by Robert B. Asprey, provides excellent, detailed information on the history of guerrilla warfare and the response to guerrilla warfare by the nations involved. These two volumes provide a

solid foundation in examining specific historical examples of guerrilla warfare and the lawful, or sometimes unlawful, use of terror to defeat guerrilla forces.

John K. Mahon's book on the *History of the Second Seminole War* provides the basic information on the root causes of that insurgency and the response by the United States Government. This case study shows terror tactics used to defeat an insurgency during the mid 1800's.

The sources used on the Philippine Insurrection vary from Congressional Records to non-fiction books. One of the more informative books is by Brian McAllister Linn, author of *The U.S. Army and Counterinsurgency in the Philippine War, 1899-1902*. The Philippine Insurrection provides an opportunity to contrast the legal versus the illegal use of terror. This case study shows how the use of terror, if not controlled, can become terrorism. The point to be made in this analysis is the adherence to the laws of land warfare and the criteria established for the legal use of terror.

The study of United States' Phoenix Program in Vietnam analyzes the effective use of selective terror in attacking a strong political infrastructure. This case study shows a different means of target selection in the use of terror and a different method of achieving the objective. The main references for this study are *Ashes to Ashes, the Phoenix Program and the Vietnam War*

by Dale Andrade; "PHUNG HOANG" Standard Operating Procedures (SOP) 1 and 2, and the "Phoenix Coordinators' Organization Course."

The last case study concerns the 1986 U.S. bombing raid on Libya. The primary source for this study is a book by Brian L. Davis called *Qaddafi, Terrorism, and the Origins of the U.S. Attack on Libya*. Also consulted are the Congressional Records on the attack. This case study focuses on the idea of legally targeting a country for a terror strike because of its support for international terrorism. It presents some of the problems associated with this type of military action, specifically the political response and the outcries from the international community.

Supporting Legal Terror As A Weapon

Finally, in this study, I will present additional supporting arguments for using legal terror as a weapon. Terror, in order for it to be acceptable as a legitimate weapon, must meet three additional criteria: it must pass the legalities of land warfare (the criteria established in Chapter four), have some historical basis and receive some type of legitimacy from military theorists. Two of the more important theorists are described below.

Mao Tse-Tung On Guerrilla Warfare translated by Samuel B. Griffith provides a historical background on the principles of guerrilla warfare. The

need for popular support for the guerrilla to be successful is an interesting insight into the nature of this kind of warfare. Mao's principles on guerrilla warfare will be compared to some of the needs or principles desired by certain forms of terrorism, specifically the need for popular support to further a cause or a people's uprising.

On War, by Carl Von Clausewitz, provides a detailed examination of war and society. Clausewitz states that war is nothing more than an extension of politics using a violent means.² He also explores the idea of total war, as well as other concepts.

Conclusion

The case studies will show not only the precedent for using terror as a weapon, but justification for the future use of terror as a legitimate weapon of the military. Terror can be an inexpensive way to wage war and accomplish specific national objectives. The large amount of literature on terrorism alone, shows how effective, in some cases, terrorism has been. Harness the power of terror under the umbrella of legal acceptance and military necessity and a nation has the potential for an extremely cost effective weapon.

Notes

¹According to the *Laws of Land Warfare*, if one targets an individual for elimination for political reasons, that is an illegal assassination. However, that does not prevent targeting individuals if it is for a specific military goals or objectives.

²Carl Von Clausewitz, *On War* (edited and translated by Michael Howard and Peter Paret, Princeton, New Jersey: Princeton University Press, paper back version, 1989) p. 75, 605.

CHAPTER THREE

RESEARCH METHODOLOGY

Introduction

The research methodology (see figure 1) of this study concentrates on defining what an act of legal terror is by establishing specific criteria. These criteria will be used to analyze specific historical case studies. The analysis of these case studies will determine if the United States has used legal terror in the past to accomplish its national goals and objectives. If a precedent exists, then an analysis can be made as to the future uses of legal terror as a weapon.

Methodology Criteria

The first step in my methodology is to define what legal terror is and establish specific criteria for it. Chapter one initially addressed these criteria. In order for an act of terror to be legal, that is, not terrorism, it must satisfy my criteria as defined below:

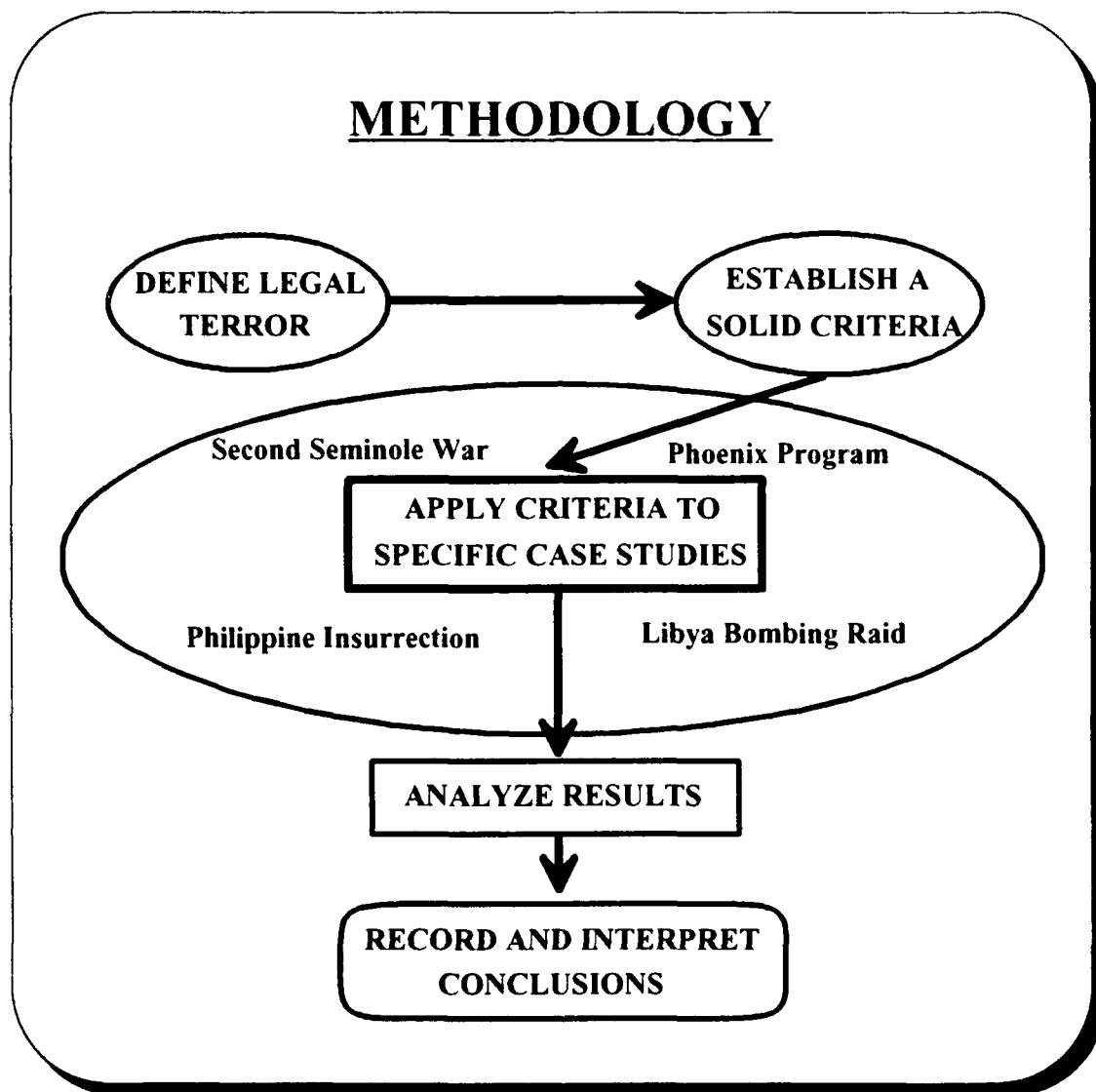


Figure 1 - Research Methodology

1. **A specific goal or objective:** The objective or goal is to coerce, intimidate or influence by fear, a particular individual or a group of individuals to achieve our national goals or strategic objectives.

2. **A target:** The military engagement must be directed against a specific target. This target must be a legal target according to the Laws of War.

The target itself can be civilian or military, an individual, a group of individuals, or inanimate object(s).

3. A method of engagement: The method of engagement must be accomplished either directly or indirectly by military assets. These assets can be an individual soldier, a military unit, a specific weapon or weapon system, or a combination of the above. The method of engaging the target can be accomplished directly or indirectly depending on the objective or goal.

A direct engagement influences or coerces an individual or group of individuals overtly. An indirect engagement centers on trying to destroy or threatening to destroy a fixed structure, infrastructure or support base. Either method used must produce enough fear to accomplish the objective. The method of engagement must be according to the laws of war.

The next step in my methodology will be the application of these criteria to specific historical case studies. In each case study, I will provide background information on the situation. After that, I will apply the criteria to each situation. The final analysis will decide if the United States used legal terror to achieve its objective. I also will address whether the use of terror was effective or ineffective.

The final step in my methodology will be an analysis of the effectiveness of legal terror and a determination of whether legal terror should be used today or in the future. This final analysis will establish one of two conclusions.

(1) Certain situations call for the lawful use of terror by the United States.

Or

(2) Legal terror should not be considered as a tool of war by the United States, even if it is legally correct, because of possible moral implications.

CHAPTER FOUR

THE LEGAL USE OF FORCE

Introduction

The major criteria for using terror as a legal weapon, is that the target and method of engagement must be according to the laws of land warfare. This chapter will deal specifically with the following issues:

1. What makes up the legal use of force?
2. What is a legitimate target?

For this study, the term "use of force" also will mean or imply the "threat of force." The use of terror as a weapon does not have to be the actual employment of force or violence. The very threat of the employment of force or the threat of continued employment of force, can be enough to accomplish the stated goals and objectives of a nation.

The laws of land warfare exist to protect both noncombatants and combatants from "unnecessary suffering." It provides safeguards for specific fundamental human rights for prisoners of war, wounded, sick and

civilian personnel.² Additionally, the laws of land warfare help in the restoration of peace after a conflict has ended.³

To be legal, the use of military force must be under a condition of war.⁴ The law of land warfare defines war as "a legal condition of armed hostility between States."⁵ This "legal condition" is usually, but not always limited to a formal declaration of war.⁶ Legally, A nation does not have to have a declaration of war to use military force. The United States has the War Powers Act that gives the President the authority to use military force without formally declaring war. The Geneva Conventions have a similar loophole for the use of military force. The Geneva Conventions state that each nation has an "inherent right of individual or collective self-defense against armed attack."⁷

The United States has exercised its rights of self-defense often. In most of these situations, the United States did not formally declare war, though it used military force to counter threats to national security (see figure 1 for a partial list).⁸ This stipulation in the Geneva Conventions provides the President international justification to use force without a formal declaration of war for the purpose of national self preservation and the protection of national security interests. Consequently, the question becomes what force can be legally used to accomplish this?

<u>YEAR</u>	<u>INCIDENT</u>
1804-1805	Expedition To Libya Against The Barbary Pirates
1916	General Pershing's Campaign Into Mexico To Capture Or Kill Pancho Villa
1928-1932	U.S. Marines' Campaign In Nicaragua To Capture Or Kill Augusto Cesar Sandino
1967	U.S. Army Personnel Assistance To The Bolivian Army To Kill Or Capture Ernesto "Che" Guevara
1985	U.S. Air and Naval Forces Used To Force An Egyptian Airliner To Land At Sigonella, Sicily To Capture Hijackers Of The "Achille Lauro" Cruise Ship
1986	The Bombing Of Libya By United States Warplanes
1983	The Invasion of Grenada In Order To Protect U.S. Civilians On The Island and Prevent a Communist Arms Buildup
1989	The Invasion Of Panama By U.S. Armed Forces

Figure 1 - Use Of Military Force Without A Declaration Of War

The Legal Use Of Force

According to the laws of land warfare it is illegal to "employ arms, projectiles, or material calculated to cause unnecessary suffering."⁹ What then makes up unnecessary suffering or injury? According to the manual the only types of weapons specifically outlawed, because they will cause unnecessary suffering are:

Lances with barbed heads, irregular-shaped bullets, and projectiles filled with glass, the use of any substance on bullets that would tend unnecessarily to inflame a wound inflicted by them, and the scoring of the surface or the filing off of the ends of the hard cases of bullets.¹⁰

The use of atomic weapons and weapons that use fire, such as napalm, are not illegal. The United States has used these weapons in the past, specifically in the bombing of Germany and Japan with incendiary weapons, the use of atomic weapons against Japan and the use of napalm in Vietnam.

The laws of war specifically outlaw using poisons as weapons. This means, for example, one country cannot threaten to poison another country's water supply, with the intent of causing terror and coercing that country into accepting its will. This would be an illegal use of force and fall under the category of terrorism. The only stipulation to this provision is the legal use of herbicides to destroy crops. The crops must be intended solely for the use and support of an enemy force. Herbicides can only be used if they do not pose a threat to human life.¹¹

According to the Geneva Protocol of 1925, the use of chemical and biological weapons are expressively forbidden. The United States, however, does not agree. Instead, the laws of land warfare state that chemical weapons can be used as a retaliatory weapon but must be approved by the President of the United States.¹² The United States does accept the Geneva

Protocol concerning the illegal use of bacteriological warfare and will not use these weapons.¹³

There are a variety of legal weapons that can be used to wage war. The difference between using terror as a weapon and terrorism, is whether the weapon itself is legal according to the laws of land warfare. The other important fact is whether a state of armed conflict exists between STATES, not interest groups or criminal gangs, but legally recognized belligerent forces.

What Is A Legitimate Target?

Having discussed the legal use of force, it is now important to understand what constitutes a legal or legitimate target. Figures 2 and 4¹⁴ show the framework of legal targets in both a conventional and an unconventional or guerrilla war environment. Each of these figures will be discussed in detail because they define what a legitimate or legal target is in either a conventional or unconventional war.

In a conventional war, such as World War II, there are distinct characteristics that make up a legitimate military target. Figure 2 shows the breakout of these targets as they relate to military operations, military effort, war effort and non participation. All elements involved with military

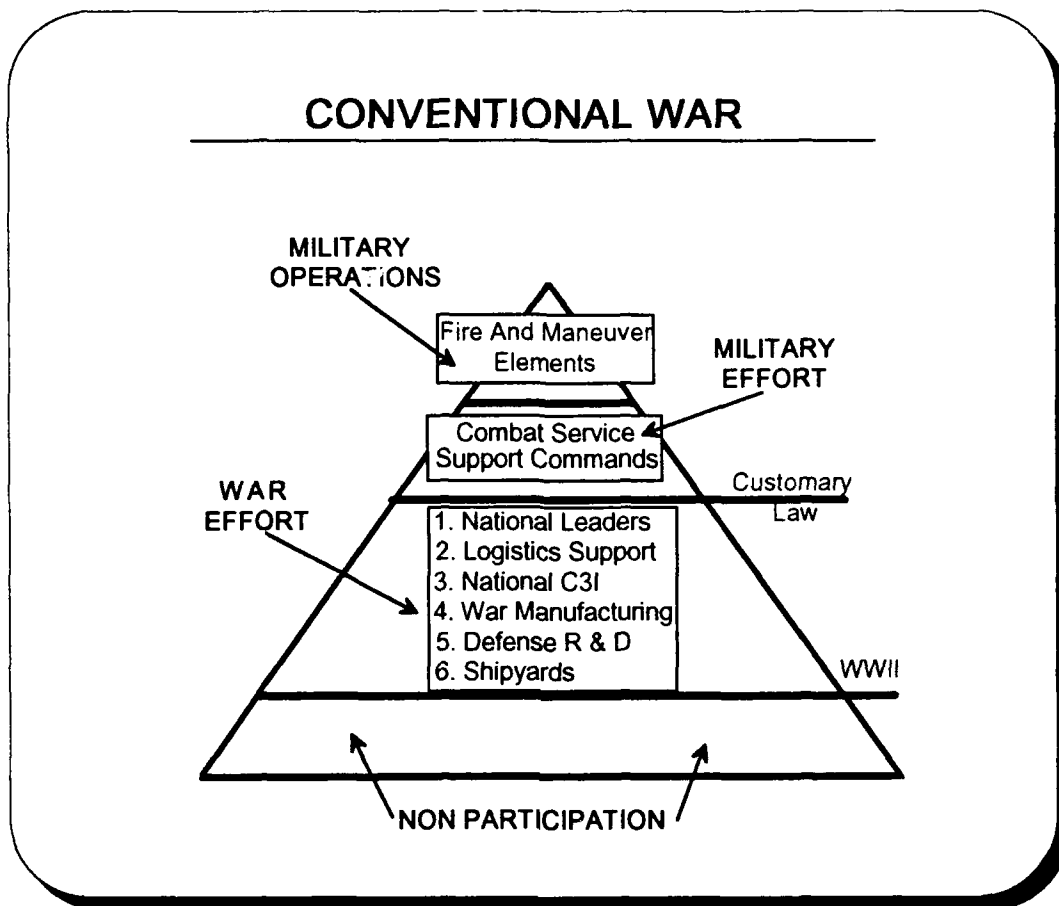


Figure 2 - Legal Targets In A Conventional War

operations are fair game for military force. These elements include combat units such as armor, infantry and field artillery. The next category consists of the military effort. This includes combat support and combat service support organizations such as transportation, signal, and air defense units. Again, there is no limitation on being able to target these types of units. Both military operations and military effort elements involve targets based

on customary law. Customary law is an unwritten law by which all nations, by tradition, are bound to abide.¹⁵

With the arrival of World War II, a new target group was introduced: "The War Effort." Figure 2 shows that the war effort falls below the line of customary law. Changes in technology gave nations the ability to reach inside a country and attack civilian elements supporting the war effort. These changes in technology allowed nations to take the war to the heart of a country in an attempt to destroy not only the elements supporting the war (war industry, research and development centers, shipyards, etc..) but also the will of the nation. Within the elements of the war effort, also exist the national leaders or political infrastructure. This reflects the legality of being able to target the leaders or the political infrastructure of a nation during war. These individuals must be critical, either directly or indirectly, to the support of the war effort to be targeted.

The last category or group is the non participants. These are the noncombatants who do not officially participate in the war effort. These people cannot be targeted for any reason. If they are, that constitutes an illegal use of force and possibly an act of terrorism.

The identification of legitimate targets in a conventional war is straightforward. The difficulty comes in identifying legitimate targets at the

far end of the "Spectrum of Conflict," specifically from peacetime operations to unconventional warfare (see figure 3).¹⁶ At this end of the spectrum it becomes difficult to identify the combatants from the noncombatants because of the irregularity of these environments. Figure 4 illustrates the complexity of the situation.¹⁷

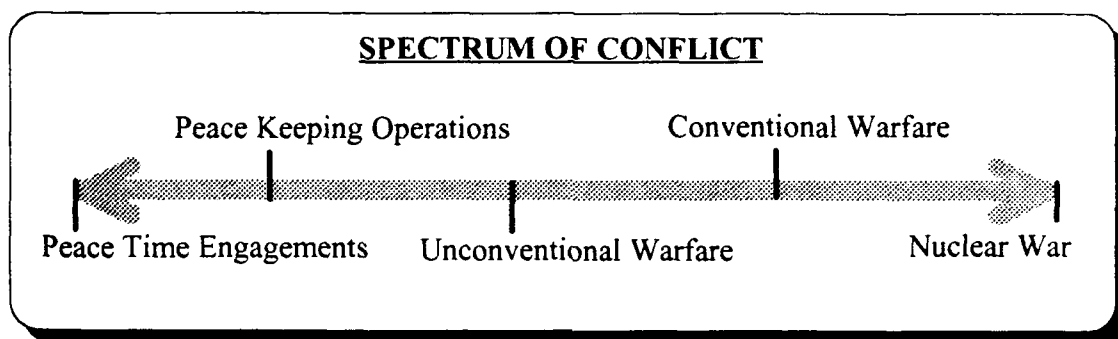


Figure 3 - The Spectrum Of Conflict

In an unconventional or revolutionary war environment there are two distinct sides to the organization, the military and the political. The major groups (military operations, military effort, war effort and non participation) do not change. What does change are the elements within each group. Military operations include the armed guerrillas or the armed units of the organization. These elements are clearly legitimate targets. The problem often comes in identifying these individuals. The legitimate targets in the "military effort" group includes both the military and the political infrastructure of the organization. Again the problem of identification arises

when attempting to target these elements. Civilian members of the political infrastructure are supporters of the military effort. This fact alone establishes them as possible military targets.

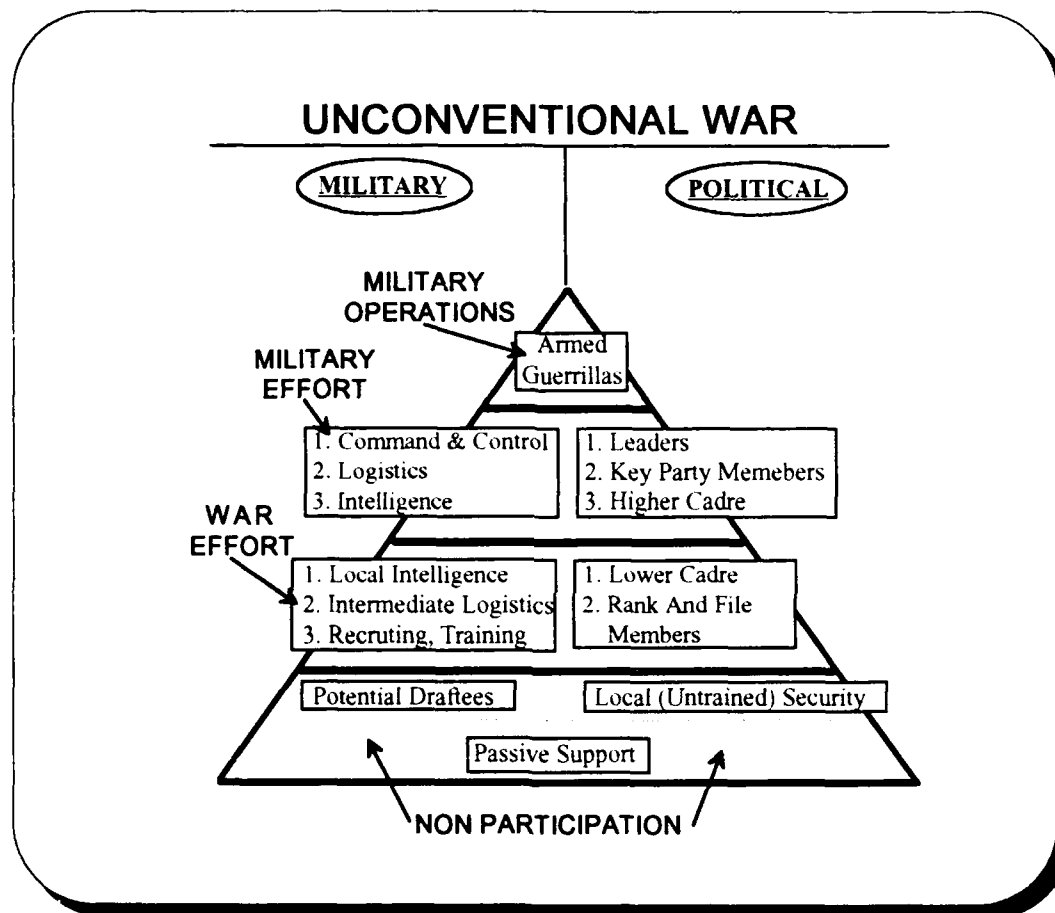


Figure 4 - Legal Targets In An Unconventional War

The elements of the "war effort" group consist of logistics and training bases of the belligerent force and can include the lower ranking political cadre. The targeting of these cadre members is difficult because of the problems of identification and justification as to the military necessity of

targeting them. Because the infrastructure normally consists of civilians, their targeting must support specific military objectives or be defined as a military necessity. This is why targeting the "war effort" often falls into the gray area of the laws of war. The legal aspect of targeting this group is not clearly defined. Targeting is normally justified by military necessity, political policy or on a specific interpretation of the laws of war.¹⁸

The last group, as in conventional war, is the non participants. The military cannot specifically target these individuals. Therefore, the challenge is sorting out the noncombatants from the combatants and active supporters in a guerrilla environment.

This section has shown the variety of legal targets against which military force can be applied. The biggest concern in identifying military targets is proper identification of civilians involved with the war effort either directly or indirectly. The main point is that military personnel and equipment are not the only targets that can be engaged. Anything identified or defined as critical to an enemy's war effort can be targeted with military force. When that targeting gets into the gray areas, political policy will normally fill the gaps that the legal issues fail to answer.

Conclusion

The use of legal terror as a weapon depends on being able to identify a legal target. Legal targets range from military units, to civilians supporting the war effort. The legal use of military force is dependent on whether it complies with the laws of war. Legally, to accomplish this, three conditions must exist. They are:

1. A legal state of war or conflict must exist.
2. Military force must be legally acceptable.
3. The target of the military force must be a lawful target.

If these conditions exist, then legally, terror can be used to accomplish the goals and objectives of a nation.

Notes

¹Department Of The Army, *FM 27-10, The Laws Of Land Warfare* (Washington, D.C.: US Government Printing House, July 1956), 3.

²*Ibid.*, 3.

³*Ibid.*, 3.

⁴*Ibid.*, 7, 15.

⁵*Ibid.*, 7.

⁶*Ibid.*, 15.

⁷*Ibid.*, 7.

⁸Information for figure 1 was taken from Department Of The Army, *DA PAM 27-50-204, The Army Lawyer*, (Washington, D.C.: U.S. Government Printing House, December 1989), 7.

⁹*Ibid.*, 18.

¹⁰*Ibid.*, 18.

¹¹*Ibid.*, 18.

¹²*Ibid.*, C1, 15 July 76, 3.

¹³*Ibid.*, C1, 15 July 76, 3.

¹⁴Figures 2 and 4 come from *DA PAM 27-50-204, The Army Lawyer*, December 1989, Appendix B, p. 9. Also these figures were shown during CGSC military law classes.

¹⁵*Law Of Land Warfare*, 7.

¹⁶Figure 3 was developed from information taught in CGSC from the Department of Joint and Combined Operations (DJCO).

¹⁷*The Army Lawyer*, Appendix C, 9. Information also comes from notes on instructional classes held at CGSC on military law.

¹⁸*Ibid.*, 7.

CHAPTER FIVE

CASE STUDIES

Introduction

The purpose of these historical case studies is to show that the United States has used terror as a weapon to achieve its national goals or objectives. Each of these case studies will be examined using today's standards on the laws of land warfare.

I will analyze four case studies. Each of these case studies represents a different time span and a different environment. Each case study will be analyzed using the criteria for the lawful use of terror as described in chapters one and three of this thesis.

The Second Seminole War

Background Information

The Second Seminole War, 1835 to 1842, lasted for seven years and was one of the toughest and bloodiest of all of the Indian wars.¹ This war presented some very interesting points on the nature of society, the

stubbornness of an insurgent and the use of terror by conventional forces while conducting counter guerrilla warfare. This war showed that an insurgent group with no national structure, no external support, and no industrial base, could fight a very determined and bloody war. Only by the final use of terror as a weapon, was the United States Army able to end the war and remove the Seminole Indians from Florida.

Before analyzing the Second Seminole War, it is important to understand the origins of the Seminole nation. The word "Seminole" is a Creek Indian word that means runaway or break away.² The Seminoles were a conglomerate of different Indian tribes that migrated to Florida. These tribes banded together under a common bond of self protection.³ A major factor in the make up of the Seminoles was the fact that many runaway slaves lived with the Indians. These slaves were a part of the Seminole society, both as active members and as subservients. The presence of these slaves in the Seminole's population was a major reason for the start of the Second Seminole War, because the slave owners wanted their runaway slaves returned to them.

After the Revolutionary War and the War of 1812, the United States began to expand westward. The settlers, as they continued to migrate west, besieged the government to remove the Indians from their lands. Florida

was no different. The government planned to remove the Seminoles from Florida and, as such, passed the Indian Removal Act on 28 May 1830.⁴ The settlers as well as the government relied on the Army to enforce the Indian Removal Act, first by treaties and then later by military operations and eventually terror tactics.

The objectives of the Seminoles were very simple: freedom and independence. The Seminoles also wanted to keep the runaway slaves who had become assimilated into their society either by adoption or marriage.⁵ The major stipulation to the initial treaty presented to the Seminoles was the return of all slaves to their rightful slave owners. The Seminoles refused to accept that part of the treaty. Under the slave laws, children of slaves were the property of slave owner. The treaty would have literally torn apart the fabric of the Seminole society. Like the first war, the slave issue was the major cause of the Second Seminole War.

A major aspect of the war was the environment. Dense pine forests, scrub brush and scattered swamps cover the central part of Florida. Further south, the land turns into dense swamps. This was the terrain where the Seminoles learned to conduct guerrilla warfare. The Seminoles had the advantage over the soldiers because this was their home territory. They knew how to travel quickly from one point to another. Another major factor

involved with fighting in Florida, was the intense heat, insects and disease that continually plagued the soldiers. During the War, official reports recorded over 16,000 illnesses out of a total troop population of approximately 5000.⁶ This meant that soldiers were repeatedly getting ill which drained the army's assets, morale and ability to counter the guerrilla actions.

The Seminoles used guerrilla warfare tactics. The Indians would conduct raids and ambushes against soldiers and settlers. Whenever the Seminoles attempted to conduct conventional operations they normally lost, which resulted in them having to disperse back into the swamps. Overall, their guerrilla tactics frustrated and frequently defeated the regulars who were unable to overcome or modify their conventional doctrine. It was not until the United States Army adjusted its tactics that it was able to defeat the Seminoles' will to fight.

The goal of the United States was the removal of the Seminoles from Florida. Initially treaties were used in an attempt to achieve this goal. The treaties called for the removal of the Seminoles from Florida to designated lands west of the Mississippi River. Besides the migration to new lands the Seminoles would receive supplies and money. Only a few tribal chiefs actually signed the treaty. Most chiefs refused to sign the treaty and

threatened those chiefs who did sign the treaty.⁷ Because of this, General Wiley Thompson, the Indian Agent arrested one of the chiefs.⁸ General Thompson later released the chief, convinced that the chief favored the treaty.⁹ Once released, however, the chief declared war on the United States.

The Second Seminole War began on 28 December 1835. On that day, General Thompson was ambushed and killed by the Seminoles. The Seminoles also carried out an attack on a detachment of soldiers travelling from Tampa, Florida to Fort King. This detachment of men, under the command of Major Francis L. Dade, consisted of 110 regular soldiers from elements of the 2nd and 4th Artillery regiments and the 4th Infantry.¹⁰ The Seminoles ambushed and killed 107 of the 110 soldiers.

There were approximately 600 soldiers stationed in Florida during this time period. The first of many commanders was General Duncan L. Clinch. General Clinch attempted to chase down the Seminoles and force them into a conventional fight. On 31 December 1835, General Clinch attacked approximately "250 warriors, including 30 Negroes"¹¹ in the battle of Withlaochee River. During this battle, the Seminole Indians had taken defensive positions in the trees of the lake's swampy area. The soldiers attacked in a conventional style, to include a bayonet charge.¹² General

Clinch was able to defeat the Seminoles only by forcing them to retreat into the safety of the swamps.

After the battle of Withlaoochee River, General Winfield Scott relieved General Clinch as commander of the Florida forces. Before General Scott was able to conduct military operations against the Seminoles, General Gains brought a force of 1000 men from New Orleans to Florida. General Gains also attempted to destroy the Seminoles by using conventional tactics. On 26 February 1836, the Seminoles attacked General Gains' forces, causing heavy casualties. A relief force under the command of General Scott saved Gains' forces from total annihilation.¹³

General Scott's approach to the Indian problem was an attempt to conduct Napoleonic type maneuvers to smash the Seminole forces.¹⁴ This was unsuccessful. Because General Scott was slow to produce results, he too was replaced as commander of the Florida forces.

The next commander was MG Thomas S. Jesup. General Jesup attempted to fight the enemy in a series of small battles. This approach was different from previous commanders, who had attempted to defeat the Seminoles in one big fight. The tactics used by General Jesup were not successful. The lack of success in conducting conventional operations against the Seminoles became so frustrating that General Jesup resorted to

illegal (by current standards) terror tactics. In December 1837, General Jesup captured a village of women and children and held them hostage. This was an attempt to force the Seminole Chiefs to reconsider a treaty that allowed the slaves to stay with the Seminoles. The Seminole chiefs presented a flag of truce to General Jesup to discuss the new treaty. Under this flag of truce, General Jesup arrested them.¹⁵

This deceit while under the white flag of truce inflamed the Seminoles and actually fueled the war. The American people and congress were also incensed by General Jesup's treacherous acts, and he was eventually replaced as commander of the Florida forces.

The major strength of the Seminoles was their fierce pride and independence. General Jesup failed to identify and attack the enemy's weakness which was their limited logistics, food and shelter. Instead he used terror and deceit that resulted in an escalation of the conflict.

It was not until General Zachary Taylor took over the Florida forces that a change in conventional tactics began to take place. General Taylor attacked the Indian forces at Lake Okeechobee on 25 December 1837 with 1100 men. In what was the bloodiest battle of the war General Taylor defeated the Indian force. This defeat forced the Seminoles back into the swamps where they again resorted to guerrilla tactics.

After the Battle of Lake Okeechobee, General Taylor divided the territory into blocks or zones. Each block was to have a fort built in it from which the commander of the fort would conduct aggressive patrolling. This was the United States Army's first attempt at conducting a sound counterinsurgency strategy. Unfortunately the Government canceled this pacification plan because they felt it was too expensive and time consuming. Under protest General Zachary Taylor resigned as the commander of the Florida forces.

General William J. Worth replaced General Taylor. He used a campaign of terror and coercion to defeat the insurgents. General Worth began his campaign in the summer of 1841, four years after General Jesup attempted to use similar tactics. His main targets, however, were the crops and dwellings of the Seminoles and not the people themselves. General Worth correctly identified the enemy's logistics as his center of gravity. He then proceeded to completely destroy the Seminole's means of subsistence. The Seminoles, broken into small, roving bands and facing winter starvation, surrendered to General Worth on 14 August 1842. After the surrender, the Government shipped them West to the Indian Country.¹⁶ Of the approximately 4000 Seminoles only 150 remained behind in Florida.¹⁷ These Indians remained hidden in the Everglades and the Big Cypress

swamps conducting occasional raids.¹⁸ General Worth's use of terror tactics through a "scorched earth" policy ended the Second Seminole War.

The Second Seminole War provides a variety of lessons on the conduct of irregular warfare and the use of terror as a weapon. The Seminoles were an unique insurgent. Unlike most insurgents, the Seminoles were completely isolated, had no external support, and no industrial base. Yet they were able to tie up the United States Government for seven years. The Seminole War was a very costly experience for the U.S. Army in terms of manpower and dollars. Conventional forces and tactics were virtually ineffective against the Indians. The use of selective terror directed at a specific center of gravity resulted in an extremely effective policy that ultimately ended the conflict.

Application of Legal Terror Criteria

Goals or Objectives

During the Second Seminole War the goal of the United States was the removal of the Seminole Indians from Florida in support of American expansionism. A secondary goal was the return of all escaped slaves living with the Seminoles to their rightful slave owners in the North.

Target

The specific target during the Second Seminole War was at first the people, specifically key leaders, women and children. This proved ineffective and actually increased hostilities. Later the target changed to the support assets of the Seminoles, specifically attacking their means of subsistence, food and shelter (see figure 1). By attacking the support assets, the U.S. indirectly attacked the Seminoles' will to fight.

During the 1800s, while not illegal, the use of women and children as hostages was both combat ineffective and morally repugnant to the United States public. Under our current laws of war this same situation would be illegal.¹⁹ To indiscriminately hold a village of women and children (considered noncombatants) hostage violates our basic legal and moral standards. The target identified by General Jesup was not only illegal by our standards, it was also ineffective.

The actions of General Worth, although brutal and acceptable in the 1800s, are legal by our current laws of land warfare.²⁰ General Worth targeted the support structure of the Seminoles as the center of gravity for winning the conflict. By unexpectedly attacking their crops and dwellings he forced the Seminoles to move farther and farther into the swamps.²¹ General Worth's target was not only legitimate but also effective.

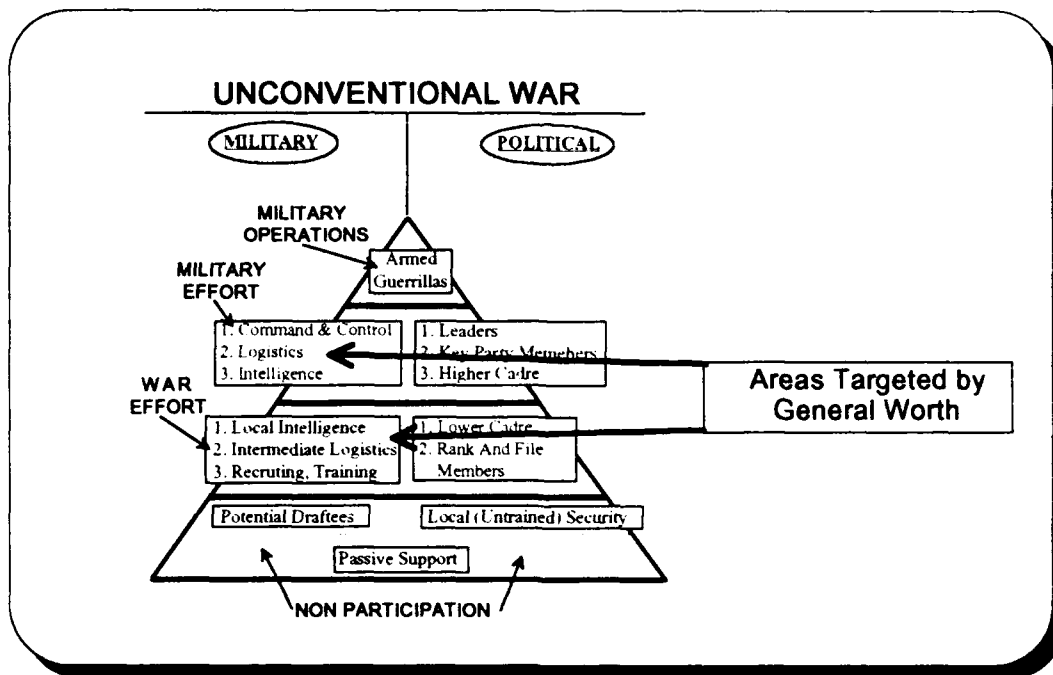


Figure 1 - Legal Targets Under The Rules Of Land Warfare

Method of Engagement

General Jesup's method of engagement was to use his forces to hold women and children hostage. He then used treachery (as defined by the laws of war) to capture the Seminole chiefs and imprison them.

General William J. Worth's method of engagement was to direct his military operations against the crops and dwellings of the Seminoles. His use of military force against these targets was justified and legal because he considered these targets essential to the Seminoles war effort.²²

Conclusion

The Second Seminole War provides an example of both the illegal and legal use of terror as a weapon. General Jesup's methods were illegal and immoral and did not constitute a legitimate use of terror as defined by this study's criteria. General Worth's methods, however, were legitimate. The legal use of terror, specifically "scorched earth," by General Worth was also an example of terror used as an indirect attack against the Seminoles. This indirect attack ultimately coerced the Seminoles into surrendering. General Worth accomplished the goals and objectives of the United States Government, the removal of the majority of the Seminoles from Florida.

The Philippine Insurrection

Background Information

From 1898 to 1902, the United States Army fought a bitter conflict in the Philippines against a guerrilla force. This conflict, the "Philippine Insurrection," provides an excellent example of the illegal use of terror by military forces. The purpose of presenting this specific case study is to provide a contrast in examples between the legal use of terror and the illegal use of terror. This case study will show that some fighting against the Philippine insurgents was illegal because it violated two of the three criteria

established for determining legal terror. The two violated criteria were target selection, specifically targeting non participants, and the method of engagements, because of the use of torture, rape, and murder by the U.S. forces in their efforts to defeat the insurgent forces.

On 1 May 1898, Commodore Dewey defeated the Spanish Fleet in Manila Bay. After the defeat of the Spanish fleet, the United States brought back to the Philippines Emilano Aguinaldo, the leader of the Philippine revolution against Spain. Aguinaldo quickly established a "war government" and declared himself as the leader.²³ On 18 June 1898, Aguinaldo revealed the Philippine Declaration of Independence, much to the displeasure of the United States.²⁴

The war against Spain formally ended on 26 September 1898 at the Paris Conference, and, the United States paid twenty million dollars to Spain for the Philippines. The mission of the United States in the Philippines was "one of benevolent assimilation, substituting the mild sway of justice and right for arbitrary rule."²⁵

The "Philippine Insurrection" began on 4 February 1899 when U.S. and Filipino troops fired on each other. Aguinaldo and his followers fought a guerrilla war against the United States from 1899 to 1902. The objectives of the guerrillas were:²⁶

1. Prolonging the war.
2. Avoiding large conventional battles.
3. Conducting raids and ambushes to harass the American Forces.
4. Disrupting the civil authority established by the Americans.

The major problem faced by Aguinaldo was the fact that there was not a single strategy or unity of effort among the guerrilla forces to accomplish their objectives.²⁷ Each guerrilla band fought the war differently. An example of this diversity occurred on the main island of Luzon.

Luzon consisted of four districts. The first district consisted of part of the Department of Northern Luzon. In this district, the insurgents lived in the cities and villages and controlled the government and civilian facilities. This presented a difficult situation for the United States Army as it attempted to identify friend from enemy. The U.S. forces conducted a series of short and brutal campaigns to eliminate the guerrillas from this area. The pacification program consisted of moving villagers into secure areas and destroying the insurgent's base of support. The Northern district was completely pacified in 1901.²⁸

In the second district, a part of the Department of Southern Luzon, the guerrilla forces also lived in the towns and villages. This infrastructure provided the intelligence and support needed by the insurgent forces to

conduct their campaigns against the U.S. Forces. The success of the guerrilla forces only lasted till 1901, when a solid counterinsurgency plan was established by the U.S. Forces.²⁹ This plan separated the insurgents from their support and attacked the infrastructure. The guerrilla forces were forced to leave the towns and live off the land. Eventually, they were rendered ineffective and the second district was also pacified.

The third district also was part of the Department of Southern Luzon. In this district the insurgents fought a conventional fight initially and then retired into the countryside. This tactic only worked for a while because the U.S. Forces were able to isolate the guerrillas from the population through civic action programs and relocation. The U.S. forces then attacked and destroyed the support structure (food and shelter) of the insurgents. The guerrilla forces in this district had to rely on conventional attacks against the towns and villages because their guerrilla operations were rendered ineffective by the American's counterinsurgency operations. The U.S. forces promptly defeated these attacks and eliminated the guerrilla threat in the third district.

In the fourth district, another area of the Department of Northern Luzon, the insurgent forces were never able to establish a sound infrastructure in the towns and villages. The guerrilla forces attempted to

use terrorism to force the civilian population to support them. These actions actually backfired and the insurgents became an ineffective threat.³⁰

Throughout these districts the U.S. forces used a sound strategy of "active military operations, local support, and a fine intelligence network."³¹ The U.S. Forces established their presence in the towns and villages. They also worked on improving the general living conditions of the Filipinos. The U.S. Forces established strict control measures to control the population and eliminate the guerrilla infrastructure. Overall the U.S. Forces were able to effectively neutralize the guerrilla threat. Unfortunately, these operations were marred by the fact the U.S. Forces used terrorism on many occasions to accomplish their goals.

Throughout the Philippine campaigns, the American forces were involved in a variety of atrocities and war crimes. Official documentation noted that during the later part of the war, 1900-1902, fifty-seven atrocities were committed by American forces.³² These atrocities were divided into the following areas:³³

1. Murder of prisoners - 6
2. Murder of civilians - 18
3. Rape - 15
4. Torture of Military and Civilians prisoners - 18

Beside these atrocities, another sixty cases of aggravated assault were recorded in various other charges.³⁴ One of the more gruesome torture techniques used by the American forces was called the "water cure." The water cure was used to coerce information from Filipinos, both guerrillas and civilians, and is described as follows:

A man is thrown down on his back and three or four men sit or stand on his arms and legs and hold him down; . . . a carbine barrel or a stick as big as a belaying pin . . . is simply thrust into his jaws and his jaws are thrust back, and, if possible, a wooden log or stone is put under his head or neck, so he can be held more firmly. In the case of very old men I have seen their teeth fall out, --and I mean when it was done a little roughly. He is simply held down and then water is poured onto his face down his throat and nose from a jar; and that is kept up until the man gives some sign or becomes unconscious. And then . . . he is simply . . . rolled aside rudely, so that water is expelled. A man suffers tremendously, there is no doubt about it.³⁵

The use of terrorism by the United States Army was never approved by the powers in Washington or the powers in Manila. These acts were usually committed by junior officers and enlisted men because of boredom and racial hatred toward the Filipinos.³⁶ An exception to this was seen on Samar Island.

On 23 Oct. and 30 Nov. 1901, the senior military commander, General Smith, gave the following order to his subordinate commanders: "I want no prisoners and I want you to kill and burn. The more you kill and burn, the better you will please me . . . the interior of Samar must be made a howling

wilderness."³⁷ He further stipulated that he wanted all persons killed who were ten years old or older.³⁸ These orders resulted in a variety of atrocities being committed on the Island of Samar.

One such atrocity involved Marine Major Littleton W.T. Waller who was charged with the murder of eleven native scouts. Major Waller ordered the natives killed because they withheld information on edible roots from the his starving American forces.³⁹ He also ordered one of the natives to be "tied to a tree and shot in different parts of his body on three successive days, the fatal bullet being delayed until the forth day."⁴⁰ These orders are an example of the extreme use of illegal force by conventional forces. The Congressional investigations of the atrocities committed on the island of Samar pointed out to America the shocking truth of what was happening in the Philippines.

Before 1901, the United States conducted itself in a superior manner. The different military districts had identified the insurgent forces, and through a combination of civil and military actions were able to defeat most of the guerrilla forces. After 1901, the atrocities on both sides of the war escalated. The Filipino guerillas "frequently fired upon . . . men from under [the] protection of flags of truce, tortured to death American prisoners who [had] fallen into their hands, buried alive both Americans and friendly

natives, and horribly mutilated the bodies of the American dead."⁴¹ The American forces responded to this by fighting terrorism with terrorism. The hard work and successful actions of the United States military in the early years of the Philippine Insurrection will always be marred by the illegal use of terror in the latter period of the conflict.

Application of Legal Terror Criteria

Goals or Objectives

The objective of the United States Army in the Philippines was pacification and benevolent assimilation. The military was expected to develop a sound civil government and eventually return control of the Philippines to the Filipinos. This objective was complicated by the fact that an insurgent force was present. Because of this, the role or mission of the military was modified to fight the insurgent while still conducting what we call today a form of nation assistance, under military martial law.

Target

The target of the United States Army varied from district to district. For the most part it was the destruction of the insurgent forces by any means

available. The targets were Filipino fighters, support assets and the will of the people to resist. These targets are all legal targets according to the laws of land warfare (see figure 2). Unfortunately, the target often changed to that of the non participants, which are not legal military targets.

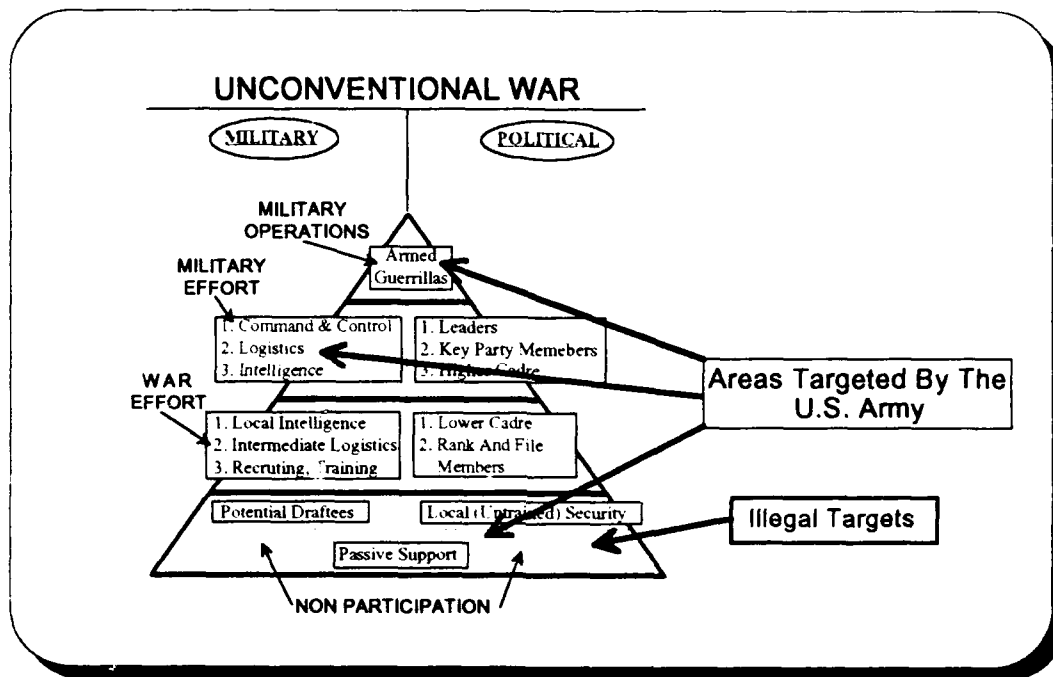


Figure 2 - Legal Targets Under The Rules Of Land Warfare

Method of Engagement

The methods of engagements varied throughout the conflict. The primary means of engagement was with direct military force. On several occasions, criminal acts such as torture, murder, rape and other atrocities were used. These acts were clearly a violation of the laws of land warfare.

Conclusion

The Philippine Insurrection officially ended on 4 July 1902. The cost of this war in terms of lives lost was significant when considering the following facts:⁴²

4,000	Americans Died
20,000	Filipino Fighters Died
200,000	Filipino Civilians Died

The alarming fact is that more civilians or noncombatants died than did actual guerrilla fighters. Not all of the civilians died due to direct military action. Many deaths can be attributed to disease caused by the destruction of the support structure in the countryside by the American forces.⁴³

The Philippine Insurgency was a successful counterinsurgency operation by the United States Army. The facts are, however, that terrorism was used against the insurgents and the civilian population on many occasions. The lesson of the Philippine Insurrection is that if one uses terror as a weapon, one must have control of that weapon. Left to its own accord, it can quickly become an illegal act and sometimes becomes outright terrorism.

The Vietnam Phoenix Program

Background Information

From 1968 to July 1972, the United States Military in Vietnam was engaged in a program called the Phoenix program or Phung Hoang. The Phoenix program was an effort by the Government of South Vietnam (GVN) to eliminate the Viet Cong Infrastructure (VCI). The unique aspect of targeting the VCI was the fact that the members of the infrastructure were civilians (the VCI was never recognized as uniformed combatants).⁴⁴ This case study will show that the VCI was a legitimate target and that the techniques used by members of the Phoenix program was a legal use of terror to accomplish a specific objective.

The VCI formed in July 1954 after the signing of the Geneva Accord which formally established a North and South Vietnam.⁴⁵ The Geneva Convention called for the removal of Ho Chi Minh's forces from the South and free elections by July 1956 to determine who would be the leader of Vietnam. In anticipation of winning the elections, Ho Chi Minh left behind a political cadre of 3000 people and an "armed military cadre" of 5000 soldiers.⁴⁶ These cadres formed the basis of the infrastructure that was later known as the VCI.

The mission of the VCI was to establish a "shadow," communist, government in order to preach political doctrine and conduct terrorist actions against the GVN officials. The VCI also attacked members of the society such as teachers, doctors and agriculture workers.⁴⁷ It was not until 1961 that the VCI was formally acknowledged by Hanoi and given the name of the National Front for the Liberation of South Vietnam (NLF). By mid 1960, the NLF had control of over 40 percent of the rural areas. The inhabitants of these areas were forced to pay taxes and supply personnel for the ranks of the Viet Cong. The GVN left a government vacuum in the villages, hamlets and districts which allowed the VCI to infiltrate. During this period the GVN was more concerned with protecting itself from a coup in Saigon than protecting the rural areas from the VCI. This left the rural countryside open for the solid establishment of the NLF. This was the beginning of the political revolution in South Vietnam which was, in fact, controlled by North Vietnam.⁴⁸

The link between North Vietnam and the NLF was the People's Revolutionary Party (PRP). The PRP consisted of political leadership from the North. Their role was to insure that the NLF stayed within the party line as dictated by Hanoi. The formal link between Hanoi and the PRP was the Central Office for South Vietnam (COSVN). This organization was the

highest level of organization in the revolution.⁴⁹ The COSVN had control over the day to day activities of the VCI, with guidance from Hanoi.⁵⁰

Figure 3 shows the relationship between the various elements of the VCI.

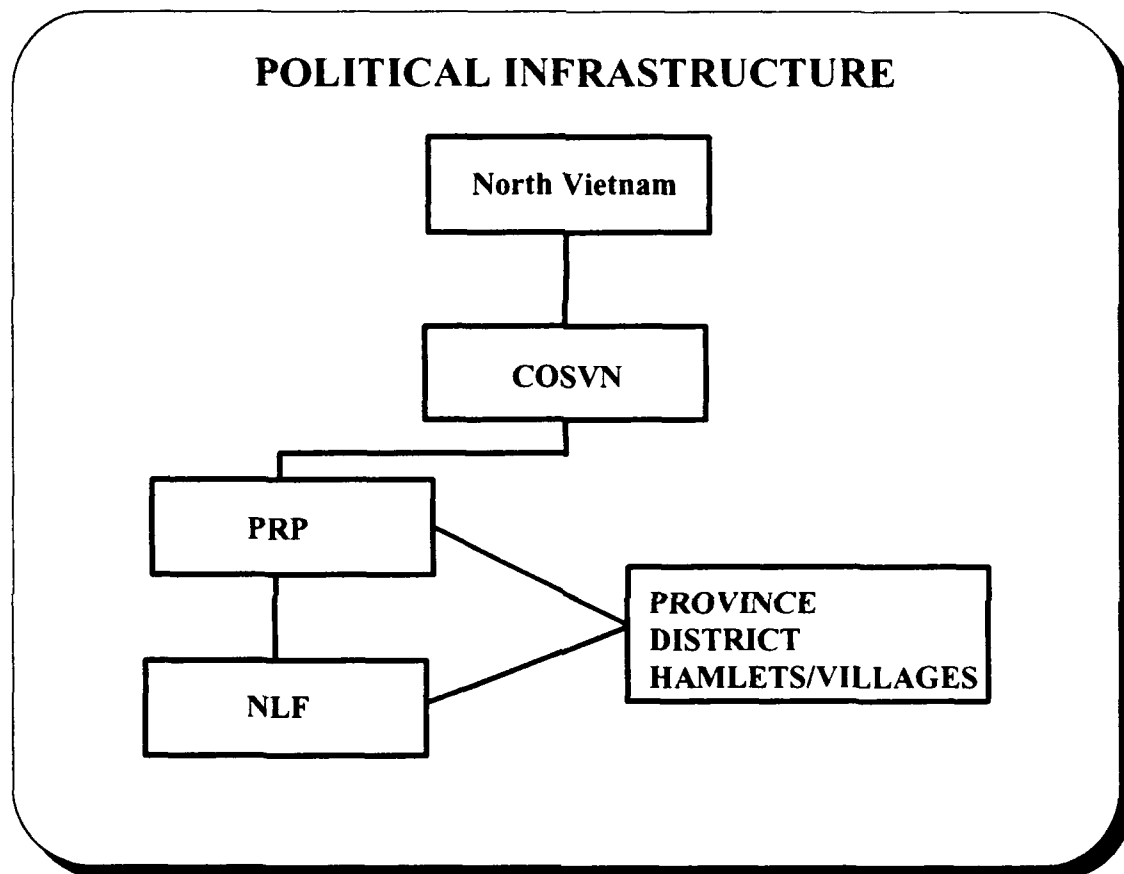


Figure 3 - Viet Cong Political Infrastructure

At the same time that the political infrastructure was growing, so were the military or guerrilla forces. The military side of the NLF, the Viet Cong (VC), were responsible for enforcing the policies established by the VCI. In this capacity the VC conducted acts of terrorism, assassinations and

protection for the VCI. These forces eventually fought both the South Vietnamese and the American forces as the war progressed.

The VCI was the root of the revolution sponsored by North Vietnam. It provided food, shelter and arms to the VC. It also conducted active recruiting within the villages and hamlets. The VCI, for the most part, lived in these areas, making their presence known, while government forces did not maintain an active presence in the villages and hamlets. As long as the VCI remained in the villages the chance of villagers cooperating with the GVN was almost non-existent because of the threat of death from the VC.⁵¹ It was this situation, the VCI's hold in the villages and hamlets and the VC terrorizing and killing the villagers, that gave birth to programs such as Phoenix.

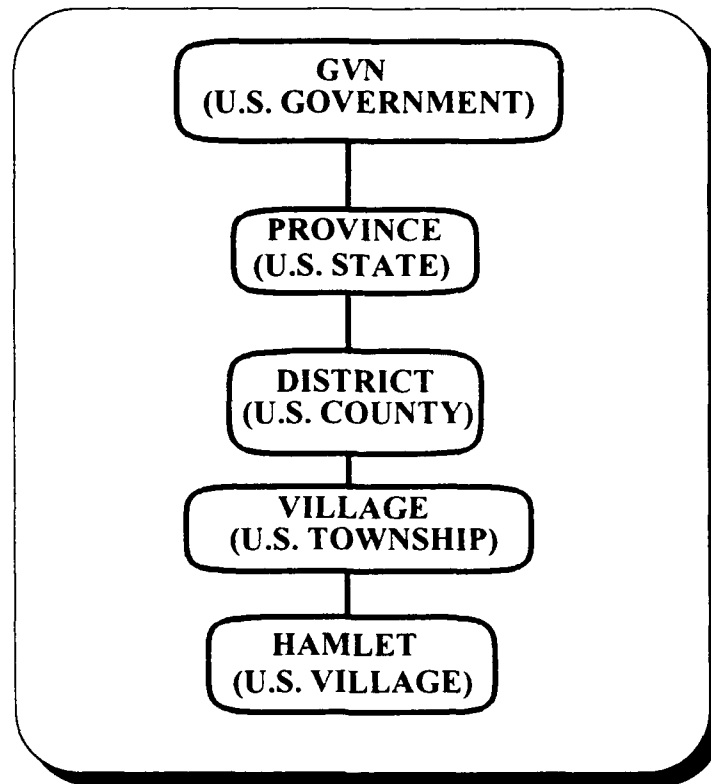
The Phoenix program was not a new concept. Other programs existed prior to Phoenix with the same objective, the identification and elimination of the insurgents' political infrastructure. The Phoenix program officially began in 1968, even though similar programs had existed as early as 1955.⁵²

During the 1968 TET offensive the VC was virtually decimated and the VCI exposed. The TET offensive was designed to cause an uprising of the people against the GVN. This did not happen and the end result was a military defeat for the insurgent forces. In that defeat many members of the

VCI were killed or identified. The TET offensive brought to light to the GVN and the American hierarchy just how extensive the infrastructure was. Because of this new revelation the Phoenix program was officially started.

The U.S. Phoenix program came under the control of the Civil Operations and Revolutionary Development Support (CORDS). CORDS attempted to conduct pacification by combining both civilian and military efforts under one coordinated program. The GVN supplied the civilian police force and special units such as the Provincial Reconnaissance Units (PRU) as the actual force used to eliminate the VCI. The United States provided American advisors called coordinators to assist the GVN with the Phoenix or Phung Hoang program (see figure 4⁵³).

The Phoenix program was organized along the civilian government structure of the GVN. The whole purpose behind this was to firmly establish and coordinate intelligence and operational assets throughout the South Vietnamese society. This was necessary to combat the VCI, which preyed on the local village population. The Republic of Vietnam (RVN - South Vietnam) was organized as follows (U.S. equivalents included):



The Province level Phoenix organization was the highest level that was involved with actual field operations (see figure 5⁵⁴). Within the Province organization was the Planning and Operations Section from where operations originated.

The GVN police force was the primary asset used in the Phoenix program. Because of the shortage of police, other forces augmented and supported them. One of the most effective forces was the PRU or Provincial Reconnaissance Unit which consisted of one U.S. advisor and twelve Vietnamese. The PRU was effective because they were able to provide instantaneous response to time sensitive intelligence. This was accomplished

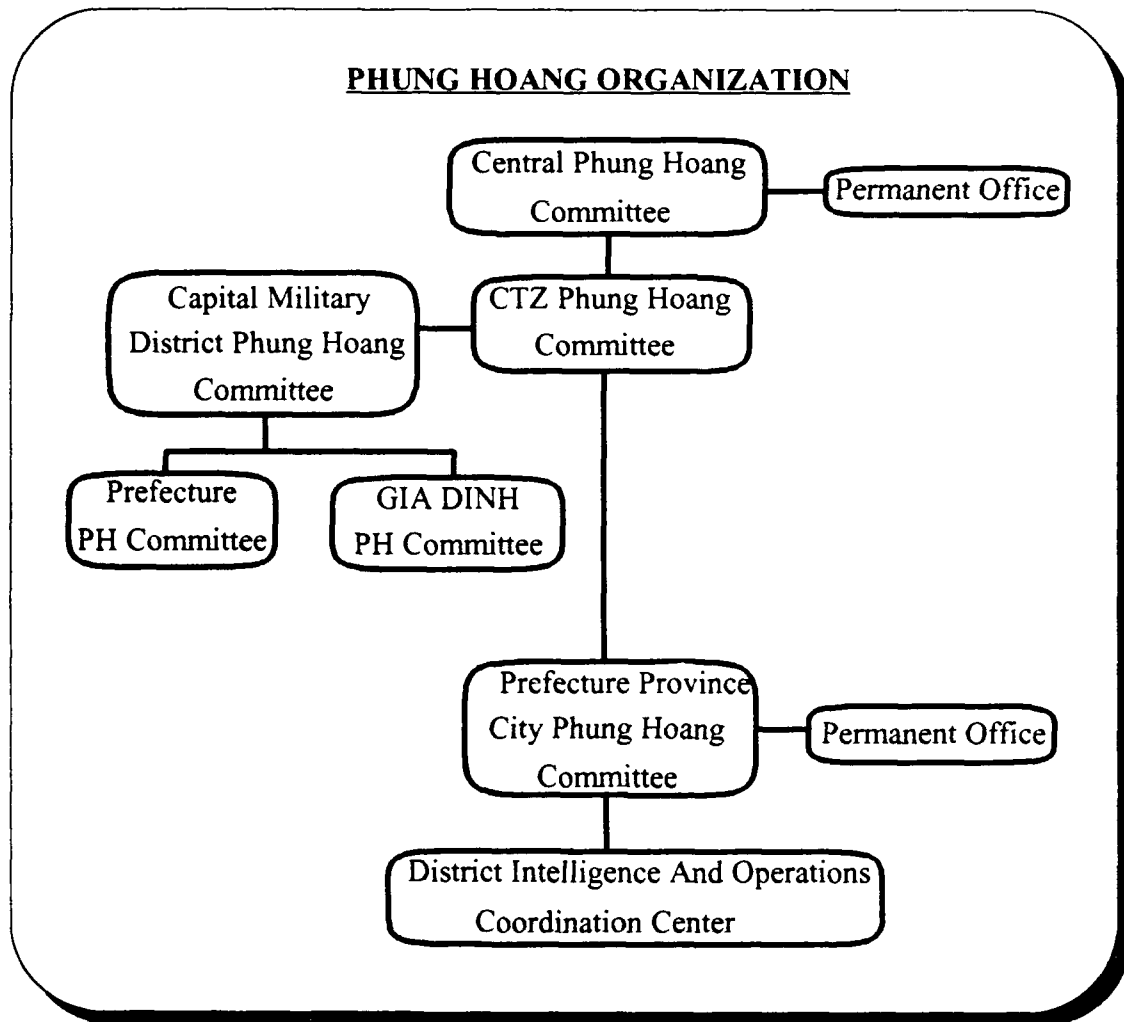


Figure 4 - Phung Hoang Organizational Chart

because intelligence and operations were coordinated under the same organization, specifically the DIOCC or District Intelligence Operations Coordinating Center (see figure 6⁵⁵).

At the District level the primary organization was the DIOCC. This was the heart of the Phoenix program. It was normally responsible for five or more villages or hamlets. The DIOCC kept track of the VCI in their area

of responsibility, working with the locals to identify the infrastructure. They also conducted field operations using the police, PRU and others.

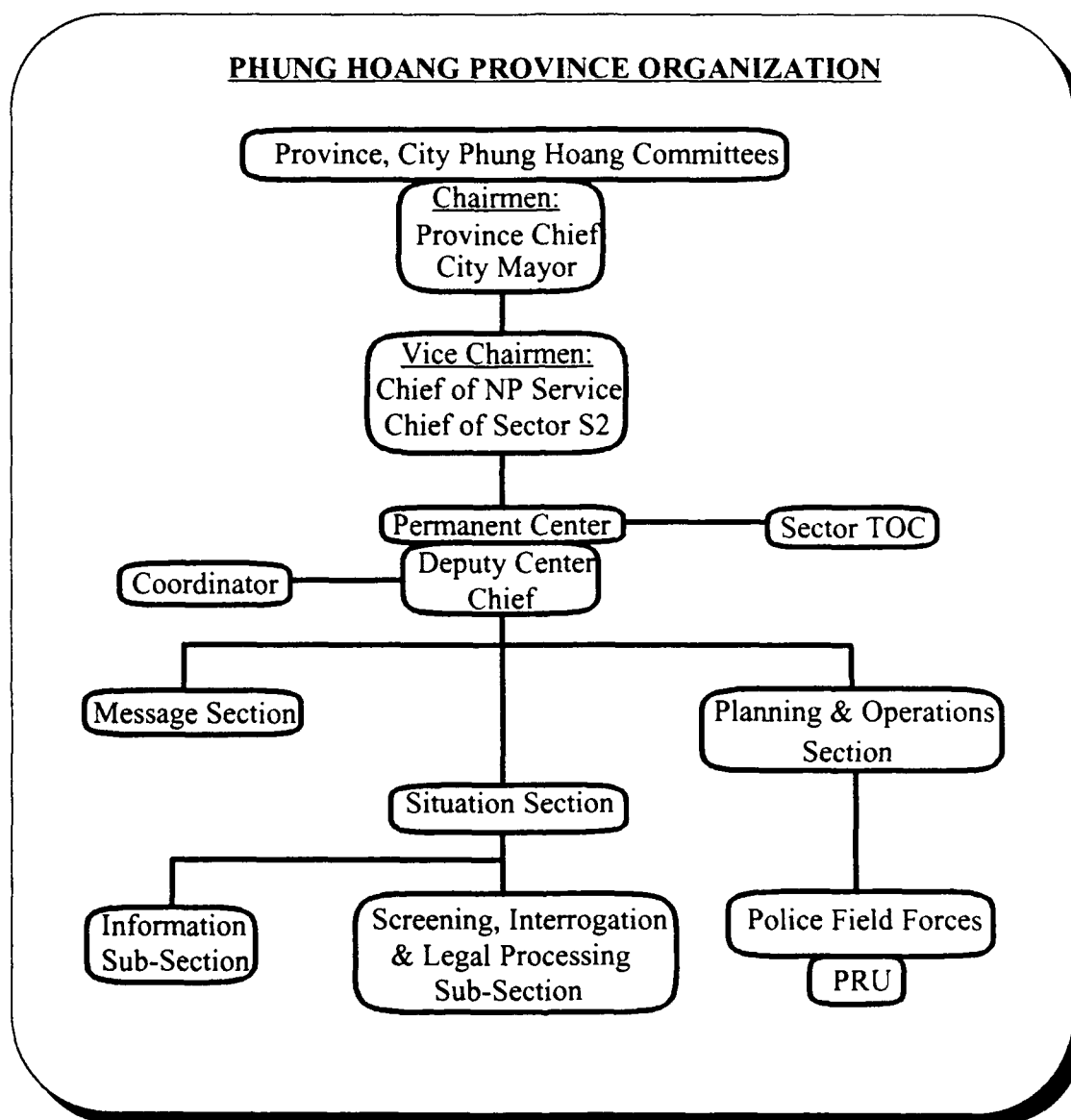


Figure 5 - Phung Hoang Province Organizational Chart

The Phoenix program relied on gathering intelligence on members of the VCI. It was from this intelligence that they were able to identify specific

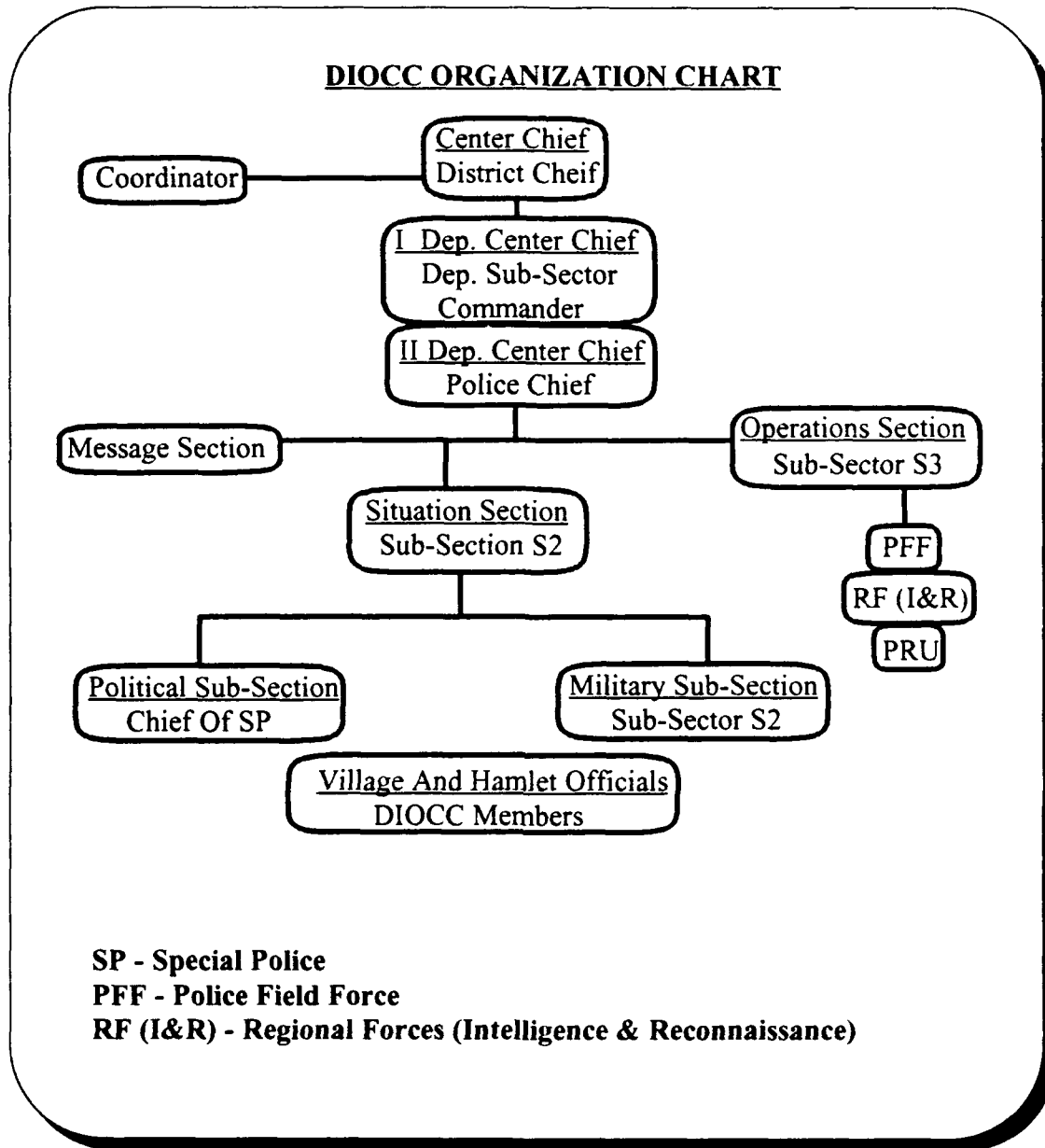


Figure 6 - DIOCC Organizational Chart

members of the VCI. Once a VCI member was identified the Phoenix program's goal, in priority, was to:⁵⁶

1. Recruit the suspected VCI member in order to have someone on the inside of the VCI organization.

2. Induce the suspected VCI member to defect.
3. Capture the suspected VCI member.
4. Eliminate the suspected VCI member through raids, ambushes and other types of conventional warfare.
5. The last means was to make the VC think that one of their own had betrayed them. This was done by leaving incriminating evidence in a place where it would be found. The VC would then take care of the individual that they believed had betrayed them, normally by killing him or her.

The Phoenix program was very successful in its operations against the VCI. It was able to coerce many members of the VCI to "Chieu Hoi" or change sides and fight for the GVN. The Phoenix program became so effective that the VCI targeted Phoenix program members for assassination.

Application of Legal Terror Criteria

Goals or Objectives

The objective of the Phoenix Program was the elimination of the VCI throughout South Vietnam. The VCI was the key organization which provided support for the guerrilla and regular forces in Vietnam. By

eliminating the VCI, the support they provided would be eliminated and subsequently it would be difficult for the VC or NVA to survive.

Target

The target of the Phoenix program were the key members of the PRP, officers and cadre of the Front Groups and other committee members at all echelons of command.⁵⁷ The majority of these targets were civilians. According to the laws of war (see figure 7), civilian members of the political infrastructure are legitimate targets.

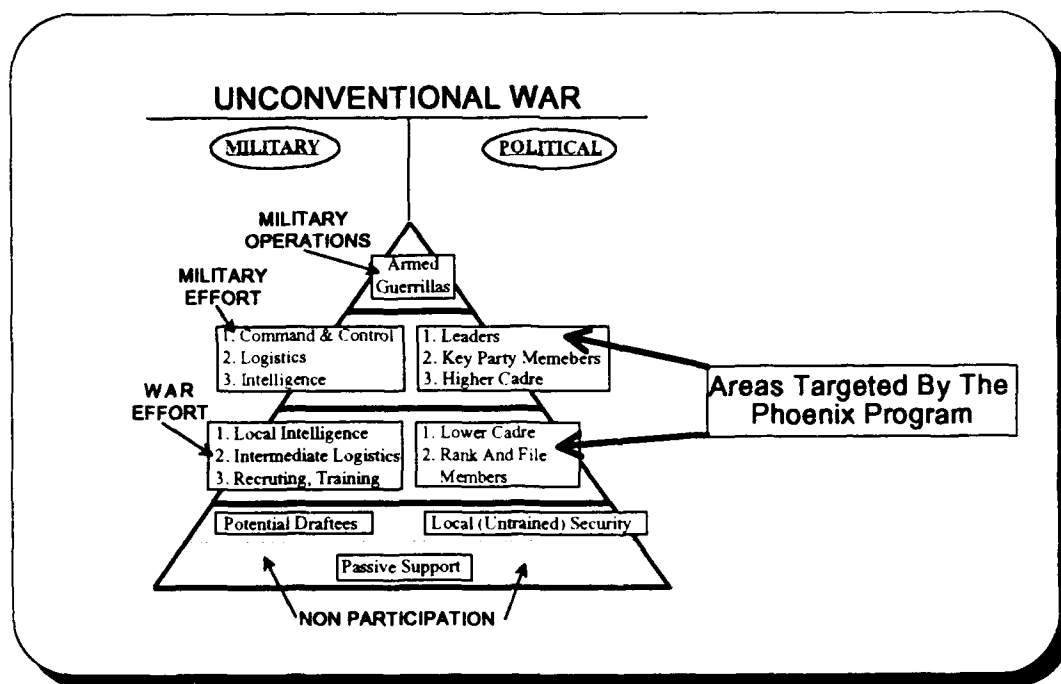


Figure 7 - Legal Targets Under The Rules Of Land Warfare

Method of Engagement

There were a number of methods of engagement used by the Phoenix program to eliminate the VCI. The lead agency in executing the Phoenix program was the police force at all levels. One of the most effective ways was the "Chieu Hoi" or "open arms" program which netted over 30,000 member of the VCI from 1963 to 1973.⁵⁸ This program allowed members of the VC or VCI to change sides and work for the GVN.

The Phoenix program employed a concept called the "rifle shot approach"⁵⁹ which was simply the identification and targeting of a specific member of the VCI. The individual VCI members would then be dealt with *in one of five ways*:

1. Recruited .
2. Induced/coerced to defect.
3. Captured.
4. Eliminated through raids, ambushes and other types of conventional warfare.
5. Compromised through covert means.

Conclusion

The Phoenix program effectively used legal terror to accomplish its mission. The effects on the VCI were dramatic. Over 81,000 members were eliminated. Of those, 33,358 VCI were captured, 22,013 VCI rallied to the side of the South Vietnamese and 26,369 were killed.⁶⁰ The methods of engagement left doubt in the minds of the VCI as to who was friend and who was foe. The program coerced many members of the VCI to Chieu Hoi. Those members of the VCI who did not Chieu Hoi faced the possibility of being snatched from their homes or ambushed when they least expected it. The Phoenix program is a model example of how legal terror can be used to attack a guerrilla infrastructure.

The Bombing Raid on Libya

Background Information

On 15 April 1986, the United States Government conducted a retaliatory bombing raid against Libya. The bombing raid was in response to Libyan leader, Colonel Muammar AL-Qaddafi's, continued support of international terrorism.⁶¹ Libya had a long history of support for international terrorism directed against the United States. This case study

will show that the United States used legal terror on specific, legitimate targets in Libya to:

1. Show Col. Qaddafi and other nations that supported international terrorism, that the United States could and would react with military force if necessary as a measure of self defense. This use of military force was in an attempt to coerce Libya and other nations into ending their support for international terrorism.

2. Attempt to weaken and possibly overthrow Col. Qaddafi's regime by showing his weakness to the Arab world and subversive elements within Libya.

To understand why the United States conducted its bombing raid on Libya, it is important to understand the background of Libya under the dictatorship of Col. Qaddafi.

Col. Qaddafi came to power on 1 September 1969 after overthrowing King Idris in a well orchestrated coup.⁶² Qaddafi based his government on total control by the political elite under the "illusion of popular support."⁶³ Qaddafi's methods of governing resulted in the elimination of his political rivals and total economic control by the Government.⁶⁴ The harshness of Qaddafi's government produced unrest and instability among the educated, middle class population. This political unrest would serve as a potential

target later by the United States Government, in its attempt to topple Qaddafi's power.

A major aspect of Qaddafi's government was its use and support of international terrorism as a means of foreign policy.⁶⁵ Qaddafi had refined international terrorism to an art by using diplomatic pouches and foreign embassies for transporting weapons and explosives.⁶⁶ He also provided payments and rewards to terrorists who accomplished successful missions.⁶⁷

Qaddafi supported over thirty different insurgent and terrorist groups around the world.⁶⁸ The following is a list of some of the more prominent groups: IRA (Irish Republican Army), ASALA (Armenian Secret Army for the Liberation of Armenia), JRA (Japanese Red Army), ANO (Abu Nidal Organization), PFLP (Popular Front of the Liberation of Palestine), NAYLP (National Arab Youth for the Liberation of Palestine), PSF (Popular Struggle Front), M-19 (Movement of 19 April) and MRTA (Tupac Amaru Revolutionary Movement).⁶⁹ These terrorist organizations represented all parts of the world from Europe to Asia to South America. Qaddafi's support to these organizations proved that Libya was a major player in the world of international terrorism.⁷⁰

Qaddafi's support of terrorism directed against the United States encompassed a time span of seventeen years and three different U.S.

Presidents. It was not until Ronald Reagan's election as President, that the United States began to take a firm political stand on the issue of international terrorism. In 1981 President Reagan issued the following statement, seven days after his inauguration:

"Let terrorists be aware that when the rules of international behavior are violated, our policy will be one of swift and effective retribution. We hear it said that we live in an era of a limit to our powers. Well, let it also be said, there are limits to our patience."⁷¹

From 1981 to 1986, the United States, under President Reagan, was the subject and target of many terrorist attacks throughout the world (See Figure 8). The "limits of our patience" during this period seemed almost unlimited. It was not until 1984 that the "National Security Decision Directive 138, signed by the President on April 3, 1984, established in principle an U.S. policy of preemptive and retaliatory strikes against terrorists."⁷² This policy would be challenged repeatedly by Libyan sponsored terrorism until 1986 when the United States finally conducted military actions against Libya.

The United States considered peaceful alternatives before deciding to use military force against Libya. The United States attempted to resolve the issue by calling for an economic boycott of Libya. In January 1986, after

**TERRORIST ATTACKS DIRECTED AGAINST THE UNITED STATES
WITH CONNECTIONS TO LIBYA (NOT ALL INCLUSIVE)**

- * 18 April 1983 - U.S. Embassy In West Beirut Bombed.
- * 23 October 1983 - Marine Barracks in Beirut Bombed.
- * 12 December 1983 - American and French Embassies Bombed in Kuwait.
- * 14 June 1984 - TWA Flight 847 Hijacked
- * 19 June 1984 - Frankfurt International Airport Bombed
- * 23 June 1984 - Air India Jet Over The North Atlantic Destroyed By Bomb
- * 20 September 1984 - American Embassy Annex in East Beirut Bombed.
- * 1 October 1985 - Achille Lauro HIjacked.
- * 27 December 1985 - Rome and Vienna Air Port Massacres

Figure 8 - Major Terrorist Acts Directed Against The United States

evidence pointed to Libya's involvement with the Vienna and Rome massacres, President Reagan made the following statement:

Civilized nations cannot continue to tolerate in the name of material gain and self interest, the murder of innocents. Qaddafi deserves to be treated as a pariah in the world community. We call on our friends in Western Europe and elsewhere to join with us in isolating him.⁷³

President Reagan called for a world wide economic boycott of Libya. Unfortunately, Libya managed to convince the European nations that it was not in their best interest for them to support sanctions against her.⁷⁴ The European nations, concerned more about making money than Libya's use of terrorism, failed to support President Reagan. With this lack of support by

the rest of the world, the United States continued to be frustrated by Libyan sponsored terrorism.

One of the first major military operations taken against Libya was Operation Prairie Fire. The United States dispatched the navy's Sixth Fleet into the Gulf of Sidra for military maneuvers. Qaddafi had claimed the Gulf of Sidra as Libyan territory, however, most nations in the world recognized the gulf as international waters.⁷⁵ The United States decided to challenge Libya's claim and possibly draw Libya into a military conflict. Once drawn into a conflict, the United States would use her military might against Qaddafi and make him understand "that he would have to pay a price for terrorism and other aggression."⁷⁶

On 22 March 1986, the Sixth Fleet crossed the "line of death."⁷⁷ The "line of death" was a fictitious line drawn across the mouth of the gulf. Libya's response to the maneuvers of the Sixth Fleet was to fire "six to twelve missiles," which missed their targets. Libya also attempted to get in range of the U.S. ships using fast patrol boats armed with Italian antiship missiles.⁷⁸ The United States sunk the patrol boats and destroyed the missile radar sites in the port of Surt. The United States suffered no casualties or damage to either ships or airplanes. Unfortunately, political pressures in the United States forced the Sixth Fleet to leave the Gulf of Sidra three days

earlier than planned. On 27 March 1986, the Sixth Fleet sailed north of the "line of death" without accomplishing its goal of drawing Libya into a serious fight.

A further series of terrorist acts (see figure 9) against United States' personnel triggered the bombing raid against Libya. One of the key terrorist acts was the bombing of the La Belle discotheque in West Berlin that killed three people (two American service men) and wounded 229 others, 79 of which were Americans.⁷⁹ This terrorist act, and Qaddafi's plans for additional attacks against the United States, was the breaking point that led to more direct military action against Libya.

LIBYAN ACTIONS THAT RESULTED IN THE BOMBING RAID

- * The Bombing of the LaBelle discotheque in Berlin on April 5th 1986.
- * The rocket attack against the American Embassy in Beirut on 6 April 1986.
- * Unclaimed bombings directed against the United States in Bangkok and Stockholm on the 7th and 8th of April 1986.
- * Libyan plots that were discovered concerning terrorist acts against the United States' consulate in Munich.
- * Libyan orders intercepted by U.S. intelligence directing terrorist attacks against the United States on a world wide basis.

Figure 9 - Major Terrorist Events Leading Up To The Bombing Raid

The bombing raid against Libya was code named Operation El Dorado Canyon. The objective of Operation El Dorado Canyon was the destruction of key military and terrorist bases inside Libya. In addition, the United States hoped to show not only Qaddafi, but the rest of the world that it was serious about fighting international terrorism. The United States hoped that its use of military force would coerce supporters of international terrorism into ending that support. With these goals in mind, on 15 April 1986, the United States attacked Libya with thirty-three different aircraft including: F-111s, A-6s, A-7s and F/A-18s. The primary targets⁸⁰ in Libya were:

1. Bab al-Aziziyya, the seat of Qaddafi's government and command and control headquarters for terrorism.
2. The naval commando training complex near Sidi Bilal.
3. A secondary naval academy.
4. A Palestinian terrorist camp.
5. A large maritime academy.
6. Libyan surface to air missile sites.
7. The Jamahiriyyah Barracks in Benghazi, an alternate terrorist command and control center.
8. The military side of the Tripoli airport.

9. The Benina Airfield to prevent Mig-23s from taking off and interfering with the raid.

The United States chose these areas because they were legitimate military targets. They consisted of military bases, military training complexes, military hardware, and military and political command and control facilities, all of which are legitimate targets according to the laws of land warfare (see figure 10). There was a great effort by the military planners to limit the amount of collateral damage to the civilian population.⁸¹ However, some collateral damage did occur. An estimated twenty-five to thirty civilians died in the attack.⁸² In addition, the attack destroyed a portion of the French Embassy and damaged other embassies in the area.⁸³ Overall, the Libyan raid destroyed an estimated \$50 million dollars worth of military equipment and facilities.⁸⁴ The United States lost one F-111 aircraft and its two man crew when it crashed into the ocean while enroute to Libya.⁸⁵ After two years, the United States had finally used military force as stated in National Security Decision Directive 138.

The bombing raid accomplished three things. First, it produced a unifying affect on the European Community against international terrorism.⁸⁶ Second, it damaged the prestige of Qaddafi in the eyes of the Arab world.⁸⁷ Third, it had an indirect effect on other Arab nations that supported

terrorism, specifically Syria.⁸⁸ The U.S. attack on Libya surprised the Syrians. In fact, Syria went on full military alert and even started to tone down its relationship with international terrorism. This was especially true after the Western nations condemned Syria's support of terrorism in October and November 1986.⁸⁹ The downside of the raid was that the United Nation's General Assembly declared the attack against Libya as a violation of international law. A factor in this vote was Libya's ability to rally a minimum amount of support from the Third World Nations.⁹⁰

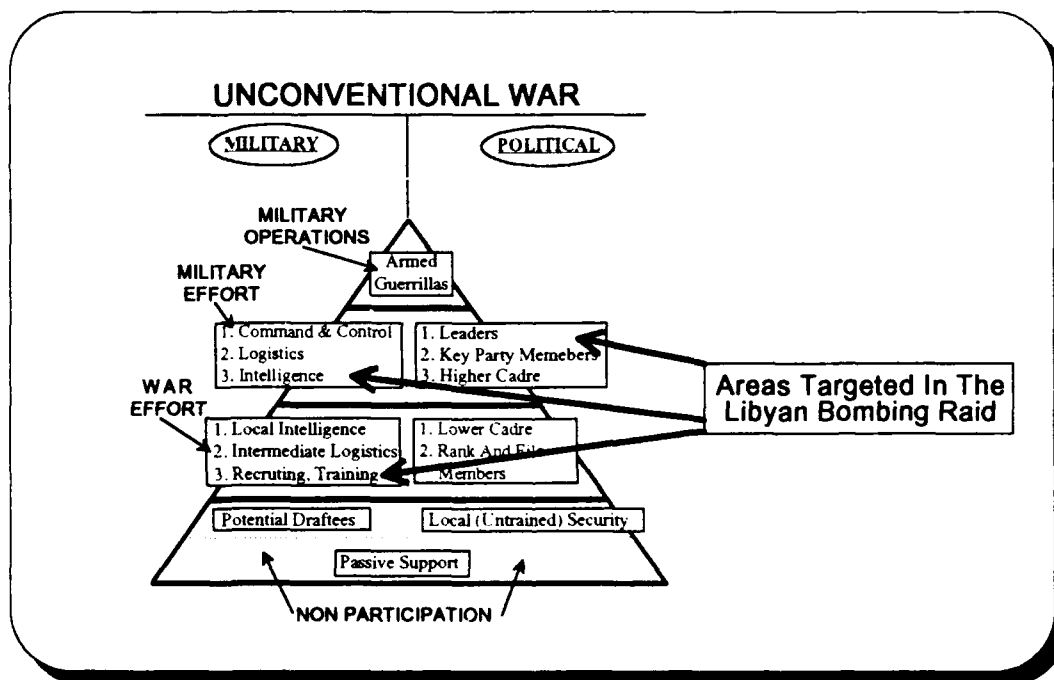


Figure 10 - Legal Targets Under The Rules Of Land Warfare

Application of Legal Terror Criteria

Goals or Objectives

The objective of Operation El Dorado Canyon was a retaliatory raid to destroy key military and terrorist bases inside Libya. The United States hoped to coerce Qaddafi into stopping his support for international terrorism. A secondary goal was to weaken Qaddafi's government in the eyes of both outside observers and internal dissenters.

Target

The targets of the bombing raid were military bases, military training complexes, military hardware and military and political command and control facilities. These targets were legitimate targets by the laws of land warfare (See Figure 10). The secondary targets were psychological targets, specifically the will of the Libyan people to support Qaddafi.

Method of Engagement

Military aircraft armed with smart weapons provided the method of engagement. Besides the direct military attacks, the United States also conducted indirect attacks against Qaddafi and his government. These indirect attacks were in the form of psychological warfare. SEAI teams

infiltrated Libyan shores and left evidence of their presence for Qaddafi's people to find.⁹¹ This was an attempt to "terrorize" Qaddafi and make him feel vulnerable to additional attacks. Both methods qualify as legitimate means of engaging targets under the criteria previously established.

Conclusion

The United States Government in effect, used legal terror as a weapon to attack Col. Qaddafi and his government in an attempt to stop terrorism. The keys to this action being a legitimate use of terror by the United States, are:

1. A legal state of conflict existed as defined by the clause in the Geneva Conventions that allows a nation the "inherent right of individual or collective self-defense against armed attack."⁹² Figures 8 and 9 show that the United States had in fact been attacked by armed elements directly and indirectly supported by Libya.

2. Military force was legally acceptable, since economic and political means had failed.

3. The targets were all legitimate targets.

The overall effectiveness of the Libyan bombing raid may never be known. What is known is that this raid had a direct effect on terrorism and

established the fact that the United States could and would use military force as a retaliatory and preemptive means of conducting counterterrorism.

Final Analysis and Conclusion

Each of these case studies shows that the United States used terror to accomplish her goals and objectives. In several situations the use of terror violated the criteria that was established for determining legal terror. As such, they violated the laws of land warfare and could be construed under our own definition as a criminal act. These situations cannot be tolerated, despite the results achieved.

In most of the cases, legal terror was used to compliment other types of military options, such as conventional or covert operations. This is a key point. Terror in itself cannot always be the sole answer. It is a weapon that needs to be used at an appropriate time, based on an appropriate situation. It is a weapon that needs to be controlled and limited or there exists the possibility of turning the legal terror into terrorism, as happened during the Philippine Insurrection.

The precedent has been set by the United States in the use of legal terror. In the case studies analyzed, legal terror was effective and enabled the United States to achieve her national goals and objectives. The questions

that now arise are whether legal terror should be used as a matter of military and political policy?

Notes

¹Russell F. Weigley, *History of the United States Army* (New York: Macmillian Publishing Co., Inc., 1967) 162.

²Edwin P. Hoyt, *America's Wars and Military Excursions* (New York: McGraw-Hill Book Company, 1987) 188.

³*Ibid.*, 188.

⁴John K. Mahon, *History of the Second Seminole War* (University of Florida Press, 1967) 72.

⁵Edwin P. Hoyt, *America's Wars and Military Excursions*, 188.

⁶Fairfax Downey, *Indian Wars of the U.S. Army 1776 - 1865*, 128.

⁷*Ibid.*, 118.

⁸*Ibid.*, 118.

⁹*Ibid.*, 118.

¹⁰*Ibid.*, 119.

¹¹John K. Mahon, *History of the Second Seminole War*, 111.

¹²*Ibid.*, 112.

¹³*Ibid.*, 147.

¹⁴Weigley, *The American Way of War*, 67.

¹⁵Downey, *Indian Wars of the U.S. Army 1776-1865*, 123.

¹⁶*Ibid.*, 128.

¹⁷Ibid., 128.

¹⁸Ibid., 128.

¹⁹U.S. Department of the Army, *The Law of Land Warfare*, FM 27-10 (Washington, D.C., Government Printing Office, July 1956), 22, 23.

²⁰Ibid., 19.

²¹*The History of the Seminole War*, 304-306.

²²Ibid., 19.

²³Brian McAllister Linn, *The U.S. Army and Counterinsurgency in the Philippine War, 1899-1902* (The University of North Carolina Press, 1989), 7.

²⁴Ibid., 7.

²⁵Ibid., 9.

²⁶The objectives were taken from information found in *The U.S. Army and Counterinsurgency in the Philippine War, 1899-1902*, 166.

²⁷Ibid., 166.

²⁸Ibid., 164.

²⁹Ibid., 165.

³⁰Ibid., 164.

³¹Ibid., 164.

³²Richard E. Welch, Jr., "American Atrocities in the Philippines: The Indictment and the Response," *Pacific Historical Review* (May 74): 234.

³³Ibid., 234.

³⁴Ibid., 234.

³⁵Ibid., 235.

³⁶Ibid., 237.

³⁷Cong. Rec., 57th Cong., 2nd sess. (3 March 1903), 2.

³⁸Ibid., 2.

³⁹Richard E. Welch, Jr., "American Atrocities in the Philippines: The Indictment and the Response," *Pacific Historical Review* (May 74): 238 - 239.

⁴⁰Ibid., 239.

⁴¹Cong. Rec., 57th Cong., 1st sess. (19 February 1902), 2.

⁴²Edwin P. Hoyt, *America's Wars and Military Excursions* (New York: McGraw-Hill Book Company, 1987), 304.

⁴³Ibid., 304.

⁴⁴Dale Andrade, *Ashes to Ashes: The Phoenix Program and the Vietnam War* (Lexington, Mass.: Lexington Books, 1990), x.

⁴⁵Ibid., 5.

⁴⁶Ibid., 5.

⁴⁷Ibid., 6.

⁴⁸Ibid., 7.

⁴⁹Ibid., 9.

⁵⁰Ibid., 9.

⁵¹Ibid., 1.

⁵²Ibid., 37.

⁵³United States Military Command, Vietnam, "Phung Hoang SOP No 3" (Headquarters, MACV, 1 February 1970, microfiche), 2.

⁵⁴Ibid., 19.

⁵⁵Ibid., 36.

⁵⁶Information on the goals of the Phoenix Program are from the "Phoenix Coordinators' Orientation Course" points of instruction, 12.

⁵⁷"Phoenix Coordinators' Orientation Course," 7.

⁵⁸Ibid., 4.

⁵⁹"Phoenix Coordinators' Orientation Course," 9.

⁶⁰Ashes to Ashes, table A-1. These figures do not take in the fact that some VCI were repeatedly captured.

⁶¹Brian L. Davis, *Qaddafi, Terrorism, and the Origins of the U.S. Attack on Libya* (New York: Praeger Publishers, 1990), .

⁶²Ibid., 2-3.

⁶³Ibid., 5.

⁶⁴Ibid., 5.

⁶⁵Ibid., 10.

⁶⁶Ibid., 11.

⁶⁷Ibid., 13-14, and Claire Sterling, *The Terror Network* (New York: Berkley Books, 1981), 244-245.

⁶⁸United States Department of State, *Patterns of Global Terrorism: 1988* (Department of State Publication 9705, Office of the Secretary of State, March 1989), 45.

⁶⁹Ibid., 45-46, Appendix B. Additional Libyan supported terrorist groups were compiled from *Qaddafi, Terrorism, and the Origins of the U.S. Attack on Libya*, 10-15.

⁷⁰Information contained in figure 1 was compiled from *Qaddafi, Terrorism, and the Origins of the U.S. Attack on Libya*, 8-71.

⁷¹Ibid., 57.

⁷²Ibid., 64.

⁷³*Qaddafi, Terrorism, and the U.S. Attack on Libya*, 83.

⁷⁴Ibid., 84.

⁷⁵Ibid., 106.

⁷⁶Ibid., 103.

⁷⁷Ibid., 104.

⁷⁸Ibid., 105.

⁷⁹Ibid., 116.

⁸⁰Ibid., 135-138.

⁸¹Ibid., 135.

⁸²Ibid., 142.

⁸³Ibid., 140.

⁸⁴Ibid., 138.

⁸⁵Ibid., 139.

⁸⁶Ibid., 160.

⁸⁷Ibid., 168.

⁸⁸Ibid., 166.

⁸⁹Ibid., 167.

⁹⁰Ibid., 151.

⁹¹Ibid., 161.

⁹²Ibid., 7.

CHAPTER SIX

ANALYSIS AND CONCLUSION

Introduction

The purpose of this final chapter is to tie together the concepts brought out in this study and address areas that need to be examined further. The idea of using legal terror as a legitimate weapon is not often discussed because of the negative connotations associated with the word "terror." I do not, nor does this study advocate the use or support of terrorism to accomplish national goals or objectives. This study has concentrated on defining the concept of legal terror, a concept which abides by our current laws of land warfare and accepted customary laws.

What Was Shown?

The specific criteria established for the use of legal terror were based on three concepts. The first concept was identification of a specific goal or objective. This goal or objective could be a national, strategic or operational goal decided by the political or military leaders.

The second concept was insuring that only a legal target was attacked. The legality of a target is the major difference between legal terror and terrorism. Terrorists are not concerned with legalities. A terrorist does not worry about whether the target is a military target or an innocent bystander. Legal terror is concerned with all of these issues.

The final concept was the method of engagement. This was determined by the laws of war. For example, one could identify a water source as a critical support asset of an enemy. If one attacked that water source with biological weapons, one would have violated the laws of war. However, if one diverted the flow of water by making a dam, one would have used a legal method of engagement. As in identifying a legal target, the method of engagement is dependent upon the laws of war.

Supporting Legal Terror As A Weapon:

Terror, in order for it to be acceptable as a legitimate weapon must support the legalities of land warfare (the criteria established in Chapter four) and have some historical basis of use. These two criteria have already been demonstrated. Legal terror was defined using the laws of land warfare and, as long as the laws of land warfare are followed, the act remains legal.

Historical precedents have been established through the use of case studies. Other historical examples of the use of legal terror include the bombing of Germany and Japan with incendiary weapons during WWII. Desert Storm, the recent operation against Iraq, provides a current use of legal terror. Legal terror was used on occasion to break the will of the Iraqi soldiers and persuade them to surrender. An example of this was the dropping of leaflets on Iraqi defensive positions. The leaflets told the Iraqi soldiers that at a fixed time they would be bombed and, to escape certain death, they should leave their positions and surrender. When that time arrived, they were bombed. The next time those leaflets were dropped many Iraqi soldiers were coerced into leaving their positions and surrendering. This is a modern example of legal terror accomplished through the combination of psychological warfare and conventional weapons/systems.

What Are The Ramifications For The Future?

If a nation can use legal terror, it can also be subjected to legal terror. This is the one aspect of warfare that has been consistent throughout time. When one side develops an effective weapon, the other side also develops it or at least develops a counter for it.

The use of legal terror walks a fine line between legitimate military force and terrorism. The objective of any nation using legal terror is to justify it based on legally accepted standards. Unfortunately, not every nation accepts the Geneva Conventions or our laws of war. Because of this, whenever legal terror is used as a weapon it probably will increase the outcries of the international community.

What Needs To Be Studied Further?

This study dealt only with the use of military power as a method of engagement for using legal terror. There are other elements of national power that could be used as a terror weapon to attack another nation. Specific examples of possible terror weapons are economics, psychological and informational terror. If one can threaten another country's economic base, then one can effectively coerce that country and accomplish one's goals. Psychological warfare has been effective for a long time, but as technology changes the method of engagement will also change. The last possible terror weapon (that I will mention) is the use of informational terror. Technology is constantly growing and society is becoming more reliant on the flow of information through computers. If one could disrupt or threaten that information flow, then one's goal or objective could be accomplished

with this method. These are but a few of the areas that could be studied as possible weapons of legal terror.

This study relied on the laws of war to establish the legalities involved with using terror as a weapon. These laws must continually be examined to insure that they are consistent with the changes in society and the nature of warfare. War is no longer a simple matter. The spectrum of conflict covers a wider area than for which the original laws of war were developed. For that reason alone, continual review and study of the laws are needed.

Final Conclusions

Legal terror is an acceptable weapon for achieving national goals and objectives. The Second Seminole War showed that terror could be used to end a conflict, when more "conventional" means failed. The Phoenix Program was an example of how legal terror could be used against a political

ADVANTAGES OF USING LEGAL TERROR AS A WEAPON

- * Cost Effective**
- * Can Be Used In Both A Limited and Unlimited War**
- * Can Be Used Covertly Or Overtly**
- * Operationally Effective**
- * Can Work When "Conventional" Means Fail**

Figure 1 - Advantages Of Using Legal Terror As A Weapon

infrastructure. Finally, the bombing raid on Libya presented an example of legal terror being directed against a country and its leadership in a very quick and cost effective manner. All of these cases qualified as legitimate use of legal terror by the criteria established in this study.

The problems with using terror as a weapon are the possibility of losing control of the situation and violating the laws of war or making a situation even worse than it was before terror was used. The Philippine Insurrection provided an example of how terror tactics could get out of control. Once out of control, the soldiers and leadership participated in terrorism and other associated criminal acts. It is because of this possibility, that legal terror must be judicially used and more importantly controlled. Like any use of military force, it needs to be used as a last resort.

DISADVANTAGES OF USING LEGAL TERROR AS A WEAPON

- * Can Be Politically Sensitive**
- * If Not Controlled, Can Turn Into Terrorism And/Or Violate The Laws Of Land Warfare**
- * International Community May Not Approve**
- * Could Make The Situation Worse**

Figure 2 - Disadvantages Of Using Legal Terror As A Weapon

Legal terror is a viable weapon and should be used judicially in certain situations by the United States to achieve her goals and objectives. Legal terror by itself is ineffective. Because of this, legal terror is a weapon that should be used covertly or overtly in conjunction with conventional and or special operations forces.

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